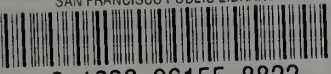


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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 13, 1985
2:00 P.M.

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10 STATE CAPITOL
11 ROOM 113
12 SACRAMENTO, CALIFORNIA
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16 WEDNESDAY, FEBRUARY 13, 1985

17 1:30 P.M.
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25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28



MEMBERS PRESENT

Senator David Roberti, Chairman

Senator John Doolittle

Senator Henry J. Mello

Senator Nicholas Petris

MEMBERS ABSENT

Senator William Craven, Vice-Chairman

STAFF PRESENT

Cliff Berg, Executive Officer

Pat Webb, Committee Secretary

Rick Rollens, Consultant on Bill Referrals

Nancy Michel, Consultant on Appointments

ALSO PRESENT

Joseph A. Duffel, Member,
California Transportation Commission

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We have a Governor's Appointment, Mr. Joseph Duffel, Member of the California Transportation Commission.

Mr. Duffel, take a seat, and why don't you tell us why you feel you're qualified to assume this position?

MR. DUFFEL: Thank you, sir.

I'm Joe Duffel for the record.

I hope I am qualified to fill it. I have average intelligence, and I'm a successful businessman, and I work very hard. And I'm willing to do the job.

CHAIRMAN ROBERTI: Very good.

Have you had experience in the area of transportation before?

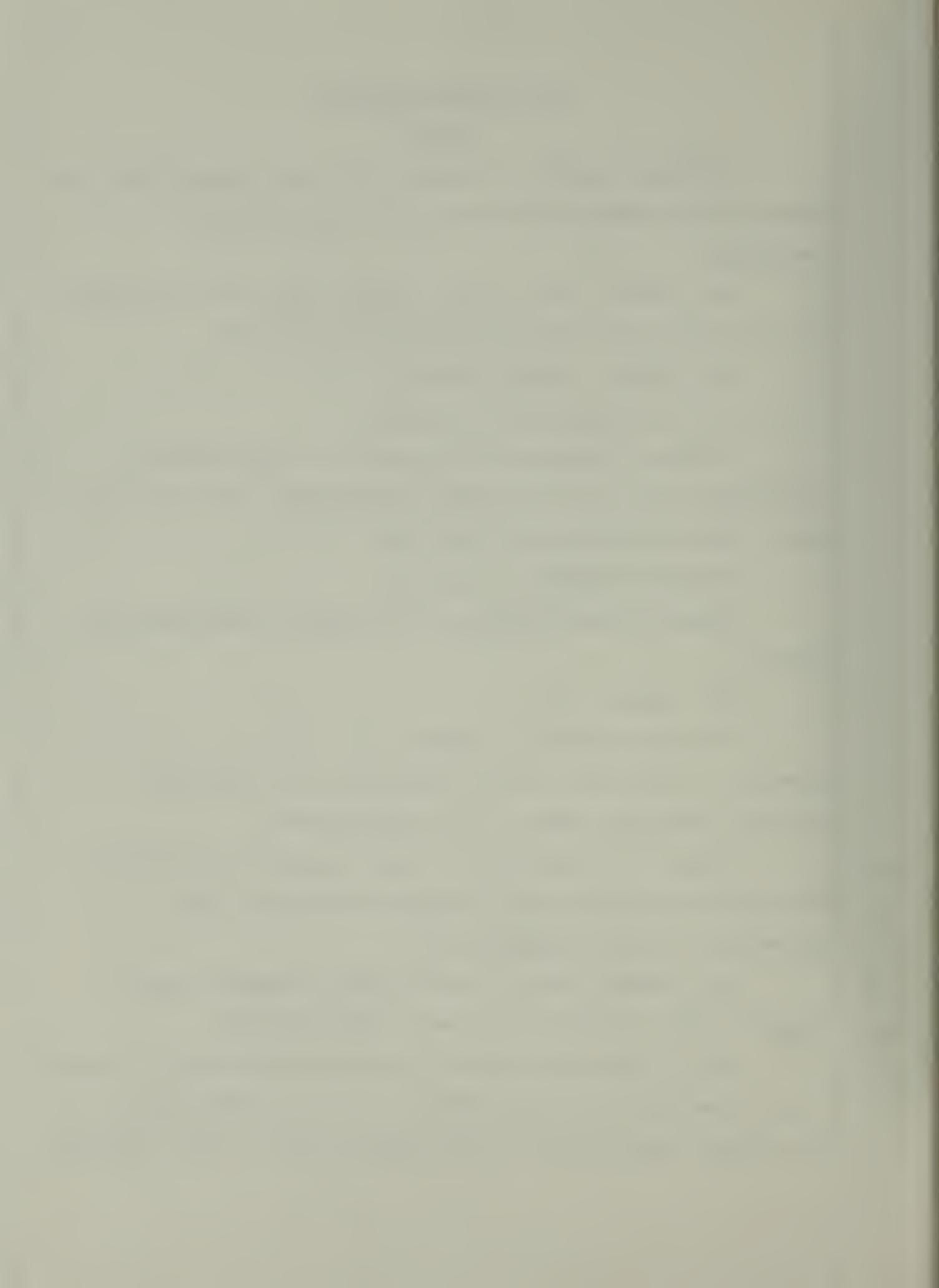
MR. DUFFEL: No.

CHAIRMAN ROBERTI: Senator Foran has a bill to raise revenues to help stall the deterioration of our roads and freeways, generally known as the infrastructure.

What is your position on that legislation, or on any other kind of legislation to increase revenues for the improvement of the infrastructure?

MR. DUFFEL: Well, I don't think I actually have a position either on his bill or me to enunciate here.

But I know that there's a great need for money. There's a great need that is going to have to be met in cooperation with the private sector as well as the public sector. And it's going



1 to be the number one problem in this state after education, maybe
2 the number two problem therefore. And there're going to have to
3 be some ways found to finance the need for improved
4 transportation.

5 And I think that's the goal, at least it would be my
6 goal, to participate in coming to those solutions in the next few
7 years.

8 CHAIRMAN ROBERTI: Then you don't believe there are
9 sufficient revenues right now to take care of all our highway
10 problems?

11 MR. DUFFEL: No, not from what I've been able to
12 determine in the short period that I have been on the Commission,
13 been attending the Commission meetings, recognizing, of course,
14 that I do not purport to be a transportation expert.

15 CHAIRMAN ROBERTI: Do you think the emphasis in
16 California money should be put into the completion of the freeway
17 system, or finding alternative methods of transporting people,
18 such as rapid transits? Where do you think our direction should
19 lie?

20 MR. DUFFEL: My off the wall opinion is that
21 Californians are not likely to give up their cars until they have
22 to, and it's the great preference of the people in California to
23 be able to use their cars. When they can't use their cars they
24 then will use public transportation.

25 I think that the solution to the transportation problems
26 will, however, include use of all those things.

27 CHAIRMAN ROBERTI: Any other questions of the Appointee?
28



1 Senator Petris.

2 SENATOR PETRIS: When I come to Sacramento, I drive over
3 the Causeway, the Yolo Causeway, which is being widened. I have
4 a very important question I've been meaning to ask CalTrans, but
5 maybe you can help me.

6 What's the purpose of the blankets and rugs that they
7 stack up on that thing?

8 (Laughter.)

9 MR. DUFFEL: That has to do -- this is not any
10 information that I have from CalTrans -- but I think it has to do
11 with the curing of the concrete during the cold weather.

12 SENATOR PETRIS: Is that some new technique?

13 MR. DUFFEL: They've been doing that ever since I've
14 been in the construction business and the development business,
15 over 40 years.

16 SENATOR PETRIS: You put blankets on it or rugs?

17 MR. DUFFEL: Yes.

18 SENATOR PETRIS: I've never seen it anywhere else. I've
19 seen an awful lot of buildings go up in Oakland and San
20 Francisco.

21 MR. DUFFEL: But it doesn't freeze down there. This is
22 winter time. It gets cold up here.

23 SENATOR PETRIS: Is that only because of the winter
24 thing?

25 MR. DUFFEL: I think that's right; however, I'm no
26 expert on concrete, either.

27 SENATOR PETRIS: Okay.
28



1 I understand you own considerable amounts of land which
2 you hope to develop. You're a builder, and you've built lots of
3 homes.

4 Do you see any problem in some of the votes in the
5 future where somebody might come up with an idea of running a
6 freeway near your land? You might want it there because it
7 improves the value; might not want it there because it deprives
8 you of the chance to build homes.

9 Do you see any problem arising in the future with regard
10 to that, that would make it difficult for you to vote one way or
11 the other?

12 MR. DUFFEL: Yes.

13 SENATOR PETRIS: What would you do? Would you take a
14 walk?

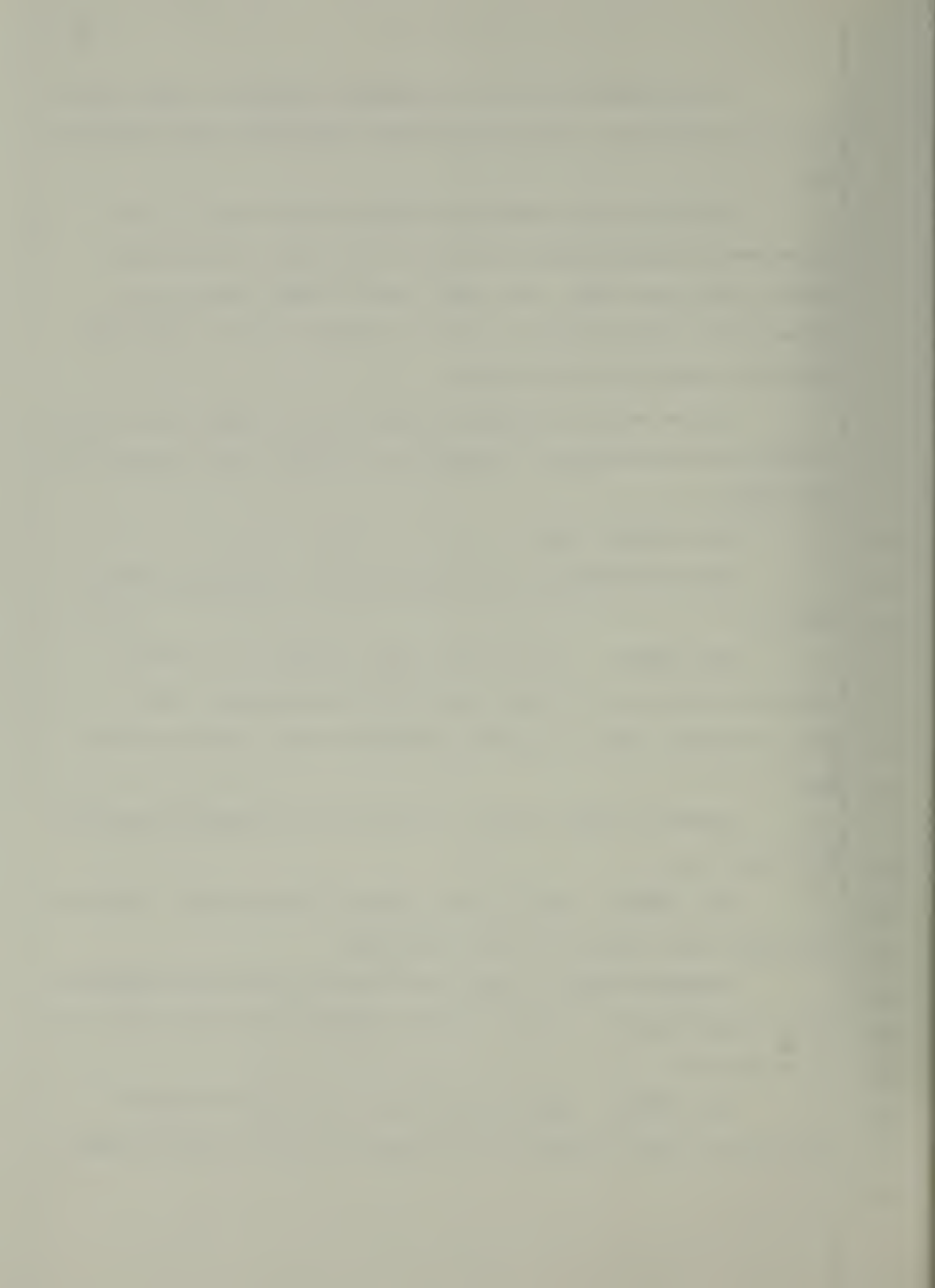
15 MR. DUFFEL: I would sure hope I would. You know,
16 conflict of interest is there and can't be tolerated. So, I
17 would certainly think I'm smart enough to take a walk, as you
18 say.

19 SENATOR PETRIS: Well, you know, it's liable to come up
20 with any of us.

21 MR. DUFFEL: Yeah, well I think it will, too. And it's
22 something about which I'm very concerned.

23 SENATOR PETRIS: What is your view on the county minimum
24 gas tax allocation? Do you think we should keep it the way it is
25 or change it?

26 MR. DUFFEL: The county minimum gas tax allocation,
27 personally -- and I don't want to open any can of worms because
28



1 I'm not an expert -- but I think that the private sector and the
2 local areas are going to have to find more ways to take care of
3 their own needs, and I think a lot of the gas tax -- I know this
4 is not a popular opinion -- but I think that the statewide needs
5 are the ones that are going to be addressed up here to a greater
6 extent. I see that as the trend, because I don't think there's
7 going to be enough money raised at this level to take care of all
8 the needs. And I wouldn't be at all --

9 SENATOR PETRIS: The problem is that the statute
10 requires a certain minimum allocation to each county.

11 MR. DUFFEL: I know that.

12 SENATOR PETRIS: If you give the state enough priority,
13 it'll cut into those funds.

14 MR. DUFFEL: I know that, too.

15 SENATOR PETRIS: That's contrary to the statute.

16 Now, would you have us amend the statute, or would you
17 have the county raise money in some other way? And if so, how
18 would they do it?

19 MR. DUFFEL: I feel that in -- you know, here again,
20 these are conclusions to which I have come without study in
21 depth, but I do feel that the counties, the cities, who have been
22 so very dependent upon revenue from the state are going to have
23 to, through the help of the private sector, find other ways to
24 meet some of their needs, not depend on the state totally.

25 And I think the trend will be in that direction in the
26 next ten years, and I think that --

27 SENATOR PETRIS: What form is it going to take?
28

1 MR. DUFFEL: Well, it took the form of a local tax in
2 Santa Clara County. That was recognizing a need that had to be
3 met. None of us likes sales taxes; they are not the kind of
4 taxes, even, that people like.

5 But I think that it is indicative of the fact that local
6 authorities, local groups, are going to have to find ways to
7 participate rather than depend totally on the state.

8 As I say, this might not be popular, and I'm not
9 speaking for anyone except Joe Duffel, but that's just an opinion
10 that I have.

11 SENATOR PETRIS: That Santa Clara thing, as I remember,
12 was a measure that we had to approve. Didn't we have to give
13 them special authority to do that?

14 MR. DUFFEL: Yes, I think that's right. I wasn't around
15 when it was being approved.

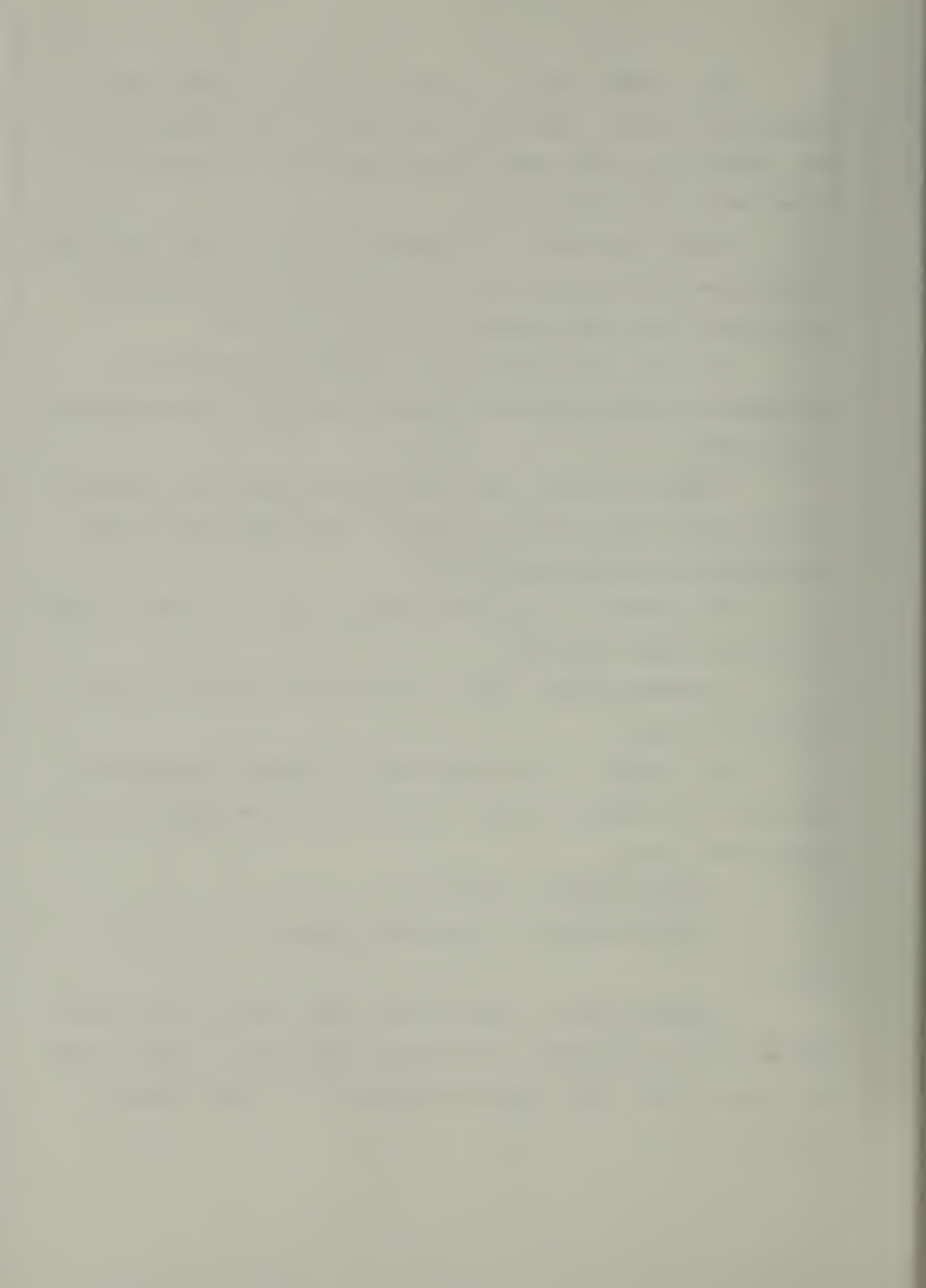
16 SENATOR PETRIS: But it's a local one set by them and
17 collected by them?

18 MR. DUFFEL: It was approved by them and collected by
19 them and set by them in their -- but it had to be approved at the
20 state level first.

21 SENATOR PETRIS: Thank you.

22 CHAIRMAN ROBERTI: Any further questions? Senator
23 Mello.

24 SENATOR MELLO: Coming from a rural part of the state,
25 Monterey Bay area, where our roads are important, I want to ask
26 you first of all, what you do you think of our state highway
27 system?
28



1 MR. DUFFEL: I think it's marvelous. It must be
2 maintained. I think it's necessary for all aspects of the state.
3 It's great.

4 SENATOR MELLO: Have you read the Director Trombatore's
5 recent five-year report on the conditions of our roads?

6 MR. DUFFEL: Yes.

7 SENATOR MELLO: In that report he has indicated, and
8 sent to the Legislature as well as the Governor, he's set
9 different plateaus for keeping up with our road maintenance and
10 construction. He set one with a five-cent gas tax increase would
11 do; what a ten-cent would do; and what fifteen cents would do.

12 As I recall the report, a five-cent increase in gas
13 taxes will hardly keep us even with maintenance, let alone safety
14 improvements; ten cents would provide for a higher level of
15 improvements and safety and some new construction; and of course,
16 fifteen cents would contribute to a higher level of both safety
17 and construction and still leave some projects unfunded.

18 You said you read that report. Would you be in a
19 position to support that report and urge the Governor to work
20 towards implementing the recommendation of the Director?

21 MR. DUFFEL: Well, I would -- I'm not sure that it's my
22 function to urge the Governor necessarily, but I think as I said
23 in answer to Senator Petris, there's not enough money. I'm not
24 sure that the state is going to be raising that much money. I
25 think the secret really is energizing the public sector to a
26 greater extent than they have been in the past.

27

28

1 SENATOR MELLO: How would you do that as it pertains to
2 road maintenance and construction?

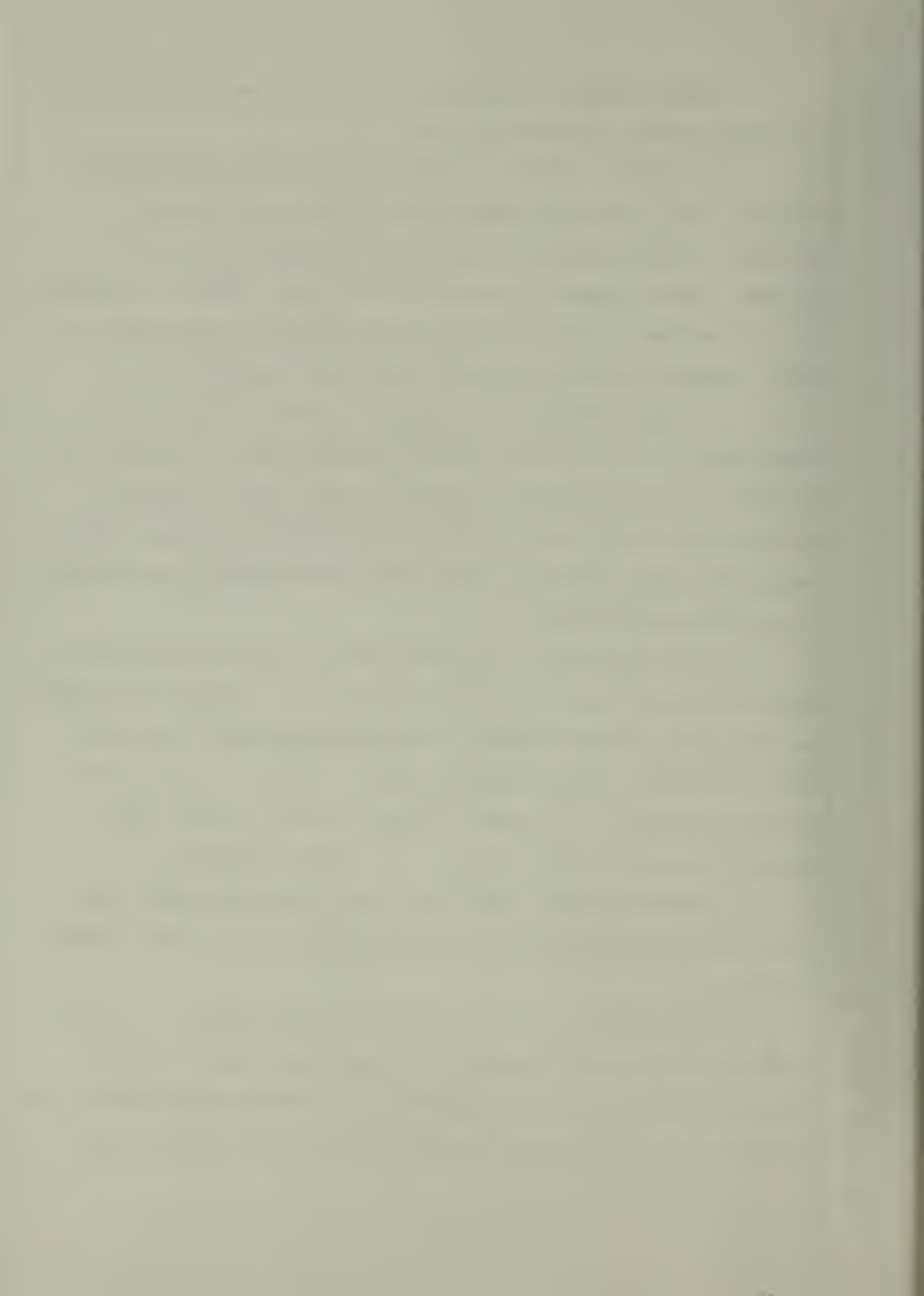
3 MR. DUFFEL: Well, I happen to be in the development
4 business, and I would say that the new home owner and the
5 developer is participating already to a large extent in his --
6 the fees, and the contributions that he gives. That's an example
7 of -- of course, he does it for selfish interest to be able to
8 build, because you can't get approval unless he does it.

9 I think, however, that other -- down in Contra Costa
10 County there is a developer who is participating in building an
11 off-ramp. I think that's an example of the way in which the
12 private sector will have to start participating more than they
13 have in the past, because so much has been dependent upon whether
14 or not CalTrans would do it.

15 And I think that Leo Trombatore is just pointing out to
16 the world that if we are going to maintain our highways and build
17 new ones, the present methods of raising money are inadequate.
18 And I think he's calling the attention to us all that we better
19 be thinking about it, because transportation is, and a need to
20 maintain transportation, is one of our major problems.

21 SENATOR MELLO: Would you feel that developers, then,
22 should pay for maintenance and construction of our state freeway
23 system?

24 MR. DUFFEL: Well, if there were more money -- I don't
25 want to say developers should do it, any more than any other
26 industry should do it, because when the developer pays for it, he
27 passes it on to his buyer, so it's the new buyer really who's
28



1 doing it. And that might unfairly shift the burden to the new
2 homeowner.

3 I think it's a very complicated question. I've been
4 there for about 20 minutes, and I don't suggest to you that I
5 have the answers to the way in which we're going to finance the
6 transportation needs of the future. But it is something that's
7 going to require a lot of thought from people a lot smarter than
8 I am.

9 SENATOR MELLO: I just think that we're just going
10 backward. I'm not blaming this Governor; he's only been there
11 two years. But I criticize the former administration because the
12 Director at that point wouldn't go out and build necessary roads
13 and improvements, especially in the rural areas.

14 But I just see our system going down hill, and if we
15 don't do something quickly, we won't have any road system to
16 repair, let alone provide for safety improvements and the roads
17 that are needed in many parts of our state.

18 You know, there's no free lunch in many areas, and
19 certainly not in roads. And I think you're alluding to the
20 developers. I think some development ought to be called upon to
21 pay for an interchange where it benefits their direct property.
22 But to ask them to go beyond, you know, their direct benefit is
23 sort of targeting at a very narrow area. I just think we have to
24 bite the bullet statewide and accept some fair means of financing
25 to catch up with our road building program.

26 MR. DUFFEL: Well, I think that it's like many other
27 areas of the state where there are problems. It requires
28

1 solutions not from the Director of Transportation necessarily, or
2 CalTrans; it requires a solution from all the state, and it
3 requires some leadership. And just like you gentlemen give
4 leadership in a lot of areas up here, I think the purpose of
5 these commissions is to try to find ways to give some leadership
6 as well. And that's what I would try to do. But I certainly
7 don't have the solutions right now.

8 SENATOR MELLO: Thank you.

9 SENATOR PETRIS: Mr. Chairman.

10 CHAIRMAN ROBERTI: Yes, Senator Petris.

11 SENATOR PETRIS: Are you ready for a motion?

12 CHAIRMAN ROBERTI: Yes.

13 SENATOR PETRIS: Mr. Duffel is a constituent of mine, a
14 very distinguished one, and I want to make the motion
15 recommending confirmation.

16 SENATOR MELLO: You asked him some tough questions,
17 though.

18 SENATOR PETRIS: He's a tough guy.

19 CHAIRMAN ROBERTI: Any discussion or debate? Any
20 opposition?

21 Secretary will call the roll.

22 SECRETARY WEBB: Senator Doolittle.

23 SENATOR DOOLITTLE: Aye.

24 SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Senator Petris.

27 SENATOR PETRIS: Aye.
28

1 SECRETARY WEBB: Senator Roberti.

2 CHAIRMAN ROBERTI: Aye.

3 MR. DUFFEL: Thank you, sir.

4 (Thereupon this portion of the Senate
5 Rules Committee hearing was terminated
6 at approximately 2:30 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

13th day of February, 1985.


EVELYN MIZAK
Shorthand Reporter



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26 Evelyn Mizak
27 Shorthand Reporter
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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

HENRY B. CHAVEZ, Member,
California Horse Racing Board

LESLIE LISCOM, Member,
California Horse Racing Board

ROBERT P. MARTINEZ, Director
Office of Economic Opportunity



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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mr. Henry B. Chavez, Member of the California Horse Racing Board.

MR. CHAVEZ: My name is Henry B. Chavez.

CHAIRMAN ROBERTI: Mr. Chavez, we'll ask you what we ask the other Governor's appointees, and that is why you feel you're qualified to assume this position?

MR. CHAVEZ: I've lived in California for about the last 20 years. I've been involved in the production of agriculture in the southern San Joaquin Valley and in the Coachella Valley of California. I'm currently Executive Vice-President and Chief Operating Officer for Superior Farming Company, a large, diversified farming company that has its home office in Bakersfield, California. We, during the years that I've been involved in the management of Superior Farming Company, we've grown from a company of just over 6,000 acres to approximately 40,000, and we employ some 3,000 employees during the peaks of our season.

I am currently a member of two commodity groups, elected by fellow growers in our region. I'm a member of the California Pistachio Commission and a member of the California Tree Fruit Agreement, and serve on the boards of both of these commodity groups to help direct and set policy for the growth and development of this industry.

1 I've also been appointed to the JTPA Board for the Kern,
2 Inyo and Mono County service delivery areas, where we help direct
3 and set policy for the training of employees -- of people to find
4 employment.

5 CHAIRMAN ROBERTI: Thank you, Mr. Chavez.

6 Currently the horse revenues have been declining in
7 recent years. The establishment of the state lottery could
8 further cut into those revenues.

9 Do you project that? And if so, what would you suggest
10 would be done?

11 MR. CHAVEZ: Well, we're quite concerned about what the
12 state lottery is going to do to the horse racing industry, but I
13 think some of the innovations that are occurring in terms of
14 simulcasting of some of our races, where we're able to share in
15 the handle in other states; possibly the Senator Maddy bill,
16 which we would have operating theaters located in areas where we
17 could encourage additional betting; plus I think the just
18 conducting a good, clean business will help improve racing or
19 encourage racing in this state.

20 CHAIRMAN ROBERTI: Senator Maddy has the off track
21 betting theater bill.

22 Do you support that?

23 MR. CHAVEZ: Yes, sir.

24 CHAIRMAN ROBERTI: We often have legislation regarding
25 overlapping of racing days. I think the problem's especially
26 acute in Northern California.

27

28

1 Would you support overlapping of Bay Area racing in
2 Northern California, State Fair racing and County Fair racing?

3 MR. CHAVEZ: It'd be hard for me to give an opinion on a
4 generalization like that, Mr. Chairman. I think we do have a
5 problem in the industry in terms of the harness racing in some
6 cases, and also in the quarter horse phase of the business.

7 We're going to have to find some solution to this
8 problem to encourage them to continue to operate in California,
9 and some overlap may be necessary.

10 CHAIRMAN ROBERTI: Assemblyman Alatorre has a bill to
11 increase the number of racing weeks in the central and southern
12 zones.

13 MR. CHAVEZ: That's correct.

14 CHAIRMAN ROBERTI: Do you favor that one?

15 MR. CHAVEZ: At the last Board meeting, I voted against
16 favoring that because, as the bill is written now, it's almost an
17 impossibility to allocate 25 additional days of harness racing
18 and 25 additional days of quarter horse racing in the southern
19 and central zones.

20 CHAIRMAN ROBERTI: I don't have any further questions.

21 Any further question of Mr. Chavez? Senator Mello.

22 SENATOR MELLO: I just wanted to ask him about whether
23 or not the race tracks are doing all they can for hiring
24 minorities, and do you think there's a balance now of hiring
25 minorities amongst the race tracts?

26 MR. CHAVEZ: I really don't think I can answer that
27 question at this time, but I'll certainly look into it.
28

1 SENATOR MELLO: I haven't heard, but do you know if
2 they've adopted any affirmative action programs, or do they have
3 outreach programs to make sure the minorities are given access to
4 jobs in the race tracks?

5 MR. CHAVEZ: Again, I don't know whether they have or
6 haven't, Senator.

7 SENATOR MELLO: All right, thank you.

8 SENATOR CRAVEN: Move Dr. Chavez' confirmation to the
9 Floor.

10 CHAIRMAN ROBERTI: Senator Craven moves that Henry
11 Chavez' confirmation be recommended to the Floor.

12 Is there any opposition? Seeing none, the Secretary
13 will call the roll.

14 SECRETARY WEBB: Senator Doolittle.

15 SENATOR DOOLITTLE: Aye.

16 SECRETARY WEBB: Senator Mello.

17 SENATOR MELLO: Aye.

18 SECRETARY WEBB: Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY WEBB: Senator Roberti.

21 CHAIRMAN ROBERTI: Aye.

22 The vote is four to nothing; confirmation is recommended
23 to the Floor.

24 Congratulations.

25 MR. CHAVEZ: Thank you.

26 CHAIRMAN ROBERTI: The next appointment is Mr. Leslie
27 Liscom, Member of the California Horse Racing Board.
28

1 Mr. Liscom, we'll ask you the same question: Why do you
2 feel you're qualified to assume this position?

3 MR. LISCOM: Okay, I feel that I have a strong sense of
4 integrity, and ethics, honesty and fairness. I think of myself
5 as well organized and conscientious. And I've been involved with
6 horses all my life. They haven't been race horses, but primarily
7 quarter horses, western show horses and roping horses.

8 CHAIRMAN ROBERTI: How do you stand on Assemblyman
9 Alatorre's bill to increase the number of racing weeks in the
10 central and southern zones?

11 MR. LISCOM: Well, I feel that the harness industry, and
12 to some extent the quarter horse industry, does have a problem or
13 circuit. And I would be in favor of that, of increasing the
14 number of weeks of racing.

15 I am not in favor of overlapping of the dates, but I
16 believe that it would be helpful to both of those industries to
17 provide them some increased weeks.

18 CHAIRMAN ROBERTI: Do you support Senator Maddy's bill
19 to authorize the establishment of off track betting theaters?

20 MR. LISCOM: Yes, I do, as long as there are some
21 controls to it, and that the theaters are far enough away from
22 the race tracks.

23 CHAIRMAN ROBERTI: I think there was legislation last
24 year that also restricted the theaters as to how much they could
25 be condensed in certain urbanized areas. I guess that was the
26 same feature as removal from proximity to race tracks.

27
28

1 MR. LISCOM: Yes, my recollection is they've scaled it
2 down so that there's only one or two theaters, and that they're
3 far enough away. And if it's done in that way, I think it would
4 expand the market for racing without hurting the attendance at
5 the recognized tracks.

6 CHAIRMAN ROBERTI: Does the Horse Racing Board have any
7 contingency program on how to deal with the lottery drain off of
8 funds, or are you going to adopt a wait and see attitude?

9 MR. LISCOM: I think that the Board itself will adopt a
10 wait and see attitude. I think the racing associations are quite
11 concerned, and I think there's been some talk about the
12 possibility of selling lottery tickets perhaps at the tracks.
13 I'm not aware that the Board itself is adopting any specific
14 program.

15 CHAIRMAN ROBERTI: Any questions of Mr. Liscom? Do I
16 hear a motion?

17 SENATOR CRAVEN: I would move.

18 CHAIRMAN ROBERTI: Senator Craven moves Mr. Liscom's
19 nomination be recommended to the Floor.

20 Is there any opposition? Seeing none, the Secretary
21 will call the roll.

22 SECRETARY WEBB: Senator Doolittle.

23 SENATOR DOOLITTLE: Aye.

24 SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Senator Craven.

27 SENATOR CRAVEN: Aye.

28

1 SECRETARY WEBB: Senator Roberti.

2 CHAIRMAN ROBERTI: Aye.

3 The vote is four to nothing; confirmation is recommended
4 to the Floor.

5 Congratulations.

6 Finally, Mr. Robert P. Martinez, Director of the Office
7 of Economic Opportunity.

8 Mr. Martinez, we'll ask you the same question we asked
9 the other appointees: Why you feel you're qualified to assume
10 this position?

11 MR. MARTINEZ: Thank you, Mr. Chairman.

12 Bob Martinez, Director Designate, Office of Economic
13 Opportunity.

14 I believe that my nearly ten years of experience in and
15 around the California Legislature in a number of capacities,
16 whether from the private sector as an advocate for various
17 associations, or whether as a legislative representative and
18 member of the executive staff of a constitutionally independent
19 board, or as an appointive member, as a chief deputy director of
20 a departmental agency, have given me a number of perspectives and
21 allowed me to develop an ability to understand and work with a
22 number of points of views, a number of vested interests. And I
23 believe that in my nine years, nearly ten years, I've developed a
24 certain expertise and a certain ability to effectively do what it
25 is that is required of me.

26 I believe that in the last eight months that I've been
27 in this position, we've done a number of things in the Office of
28

1 Economic Opportunity that begin to address the basic principles
2 of what that office is all about, and I'm hopeful of continuing
3 in that capacity.

4 CHAIRMAN ROBERTI: Thank you.

5 Are there any questions of Mr. Martinez? Senator Mello.

6 SENATOR MELLO: I have just a couple.

7 There's a continued cutback of federal funds for the OEO
8 program in the state. How do you feel this will affect the
9 ability to carry out the OEO program in California?

10 MR. MARTINEZ: Senator Mello, you are certainly
11 absolutely correct. My department is, for all intents and
12 purpose, a hundred percent federally funded, and obviously we
13 watch very closely what goes on in this year's budget
14 deliberations at the federal level.

15 We're certainly very encouraged in terms of what has
16 passed out of the Senate side and what is being deliberated on
17 the Congressional side. The Senate side, as far as my budget is
18 concerned, and which is two-thirds energy assistance moneys and
19 one-third community services block grant, up to now the only
20 affected entity was the community services block grant. But in
21 terms of what passed out of the Senate side, we're talking about
22 a seven to eight percent reduction in total moneys nationwide.
23 What it percolates down to in California, I'm not sure. But if
24 that stays through the budget deliberations, we should be in
25 pretty good shape.

26 But, as I continue to reiterate whenever I have an
27 opportunity throughout the state, I try to alert the providers
28

1 that receive our grant moneys to be very, very cognizant of what
2 is going on in Washington, and to their fullest extent possible,
3 to try to lever and integrate what they do into the viability of
4 the community services that are being provided in their local
5 regions so that other sources of money, so that public and
6 private kinds of working arrangements, can be developed, so that
7 whether it be in Monterey County, or whether it be in Alameda
8 County, or where ever in the state, that the community action
9 agencies, that the local providers are recognized as being a very
10 viable force in that community and in serving the needs of poor
11 people.

12 SENATOR MELLO: What do you feel are the priorities for
13 administering the OEO programs?

14 MR. MARTINEZ: I think the priorities for me are clearly
15 to be as efficient and effective in getting the grant moneys
16 directly to the poor people of the state. And in order to do
17 this, I have to be as efficient and as effective and as
18 communicative with the network that provides that money at the
19 local level to the extent that they understand what my priorities
20 are, whether it be weatherization, whether it be energy crisis
21 intervention money. The important thing is to let them know what
22 is required of them and allow them communication and access to me
23 so that there isn't any undue delay.

24 SENATOR MELLO: How do you respond to the allegation --
25 and I want to make it clear that these are merely allegations --
26 that with yourself and your predecessor administering the OEO
27 programs, many Blacks feel that they have been dislodged from
28 having access through the OEO programs in the state?

1 MR. MARTINEZ: I don't know how to respond to that,
2 Senator. I for one have not been confronted with that
3 allegation.

4 I do not feel that there is anything -- I cannot speak
5 for my predecessor, but I certainly can speak for myself. And I
6 think my actions stand, and there is nothing that I've done in
7 terms of providing services throughout the network, whether it be
8 community services block grant, whether it be energy crisis
9 intervention or weatherization money, or discretionary money.

10 The only thing that I care about is that it be
11 demonstrated to me that the provider is the best provider in
12 getting that service to the local community. And that local
13 community, regardless of ethnicity, the bottom line is that the
14 local community is that element of that community that is
15 qualified to receive those services, regardless of color, creed,
16 ethnicity, or anything else. And I dedicate myself to that.

17 SENATOR MELLO: Have you heard of these allegations
18 before?

19 MR. MARTINEZ: No, I have not.

20 SENATOR MELLO: Do you have an outreach program to make
21 sure that all minority groups are given equal access to the OEO
22 programs?

23 MR. MARTINEZ: Yes, I do. I do.

24 In addition to that, we are providing, as is required by
25 federal law, because we're administering federal block grant
26 money, we provide on a regular basis hearings throughout the
27 state where we reiterate what the law requires in terms of the
28

1 providers and their requirement to be equal employment
2 opportunity providers and to provide their services on an
3 equitable basis, regardless of race, creed, ethnicity, or gender.
4 And we fully commit ourselves to that.

5 SENATOR MELLO: Thank you.

6 MR. MARTINEZ: Thank you, Senator.

7 CHAIRMAN ROBERTI: The office you head, as you know, was
8 the subject of some criticisms because of your predecessor, Mr.
9 Montana. He was evidently removed from office because of the
10 criticism of favoritism, because of extraneous reasons in the
11 awarding of grants.

12 Have you formulated a program on how to deal with this
13 over and above your own good judgment, because as important as
14 that is, problems can crop up through people that you're supposed
15 to administer, even unbeknownst to you. Have you developed a
16 program, or what are your plans in this regard?

17 MR. MARTINEZ: Senator, we have developed a program, and
18 the program is one of public notice to everyone on what it is
19 that we intend to do in order to promulgate money.

20 Now, on certain moneys, if it's community services block
21 grant moneys, 90 percent of that is specifically promulgated or
22 the grant moneys are specifically sent out to the local entities
23 as a result of specific statutory direction. If there is
24 discretion on my part, if I can identify priorities as a result
25 of what I see that needs to be addressed in terms of services to
26 poor people, then I, through a request proposal process, make it
27 clear what I believe to be the priorities and the process by
28 which entities, eligible entities, can compete for that.



1 On the energy crisis -- on the energy side, the low
2 income energy assistance program side, this year for the first
3 time we sent out request for proposals to consolidate both the
4 energy crisis intervention and the weatherization programs into
5 one provider of services entity. For instance, in the Los
6 Angeles area, that was done through ten identified areas of
7 community interests or communities of interest. And those ten
8 providers each in term provided both energy crisis intervention
9 and weatherization services to the low income Californians in
10 that area.

11 We made it clear that there were certain factors that we
12 were judging the ability of each of those respective providers
13 by, and that there was a process by which they could in turn
14 question the way we went about the process, and certainly once we
15 enter into a contract, whether it be for energy services or
16 whether it be for community services block grant, we have made it
17 clear that there is an appeal process.

18 So, to that extent, the more we make what it is that we
19 require known, the better it is, the more coherent it is, what it
20 is that's necessary for being eligible for competing for those
21 services.

22 Furthermore, I was very, very cognizant when I took
23 office about the perception of favoritism, the perception of, in
24 effect, subjective or capricious kinds of actions, and so to that
25 end, I have set up workshops with the provider network, whether
26 it be CalNeva or other identified consortiums of providers, and
27 solicited their input on what it is that we can do to clarify
28

1 what the mandates are in administering the programs, and what it
2 is that they have as recourse, or what opportunities that they
3 have to provide constructive input.

4 CHAIRMAN ROBERTI: One last question from me.

5 There's considerable concern right now on the issue of
6 homelessness.

7 Is your department addressing this issue? Do you have
8 proposals? What do you propose to do?

9 MR. MARTINEZ: To the extent that we're talking about
10 that same community of interest, to the extent that many of the
11 people that are eligible for our services are -- do fall into
12 that category, we are a willing and able participant in anything
13 that is done by the administration in dealing with the issue of
14 homelessness.

15 We have suggested a number of avenues, including the
16 utilization of our network of provider services throughout the
17 state, in trying to identify the specific needs and the specific
18 community of homelessness throughout the state.

19 So, we are ready, willing, and able to work not only
20 with the administration, but with the Legislature in trying to
21 coalesce what is available to the homeless in California.

22 CHAIRMAN ROBERTI: Thank you, Mr. Martinez.

23 Any further questions of Mr. Martinez?

24 Is there any opposition in the audience?

25 SENATOR CRAVEN: Move Mr. Martinez' confirmation.

26 CHAIRMAN ROBERTI: Senator Craven moves Robert Martinez'
27 confirmation be recommended to the Floor as Director of the
28 Office of Economic Opportunity.

1 Secretary will call the roll.

2 SECRETARY WEBB: Senator Doolittle.

3 SENATOR DOOLITTLE: Aye.

4 SECRETARY WEBB: Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Senator Craven.

7 SENATOR CRAVEN: Aye.

8 SECRETARY WEBB: Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is four to nothing, confirmation's recommended
11 to the Floor.

12 Congratulations.

13 MR. MARTINEZ: Thank you, Mr. Chairman.

14 (Thereupon this portion of the Senate
15 Rules Hearing was terminated at
16 approximately 3:20 P.M.)

17 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

16th day of May, 1985.


EVELYN MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY J. MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

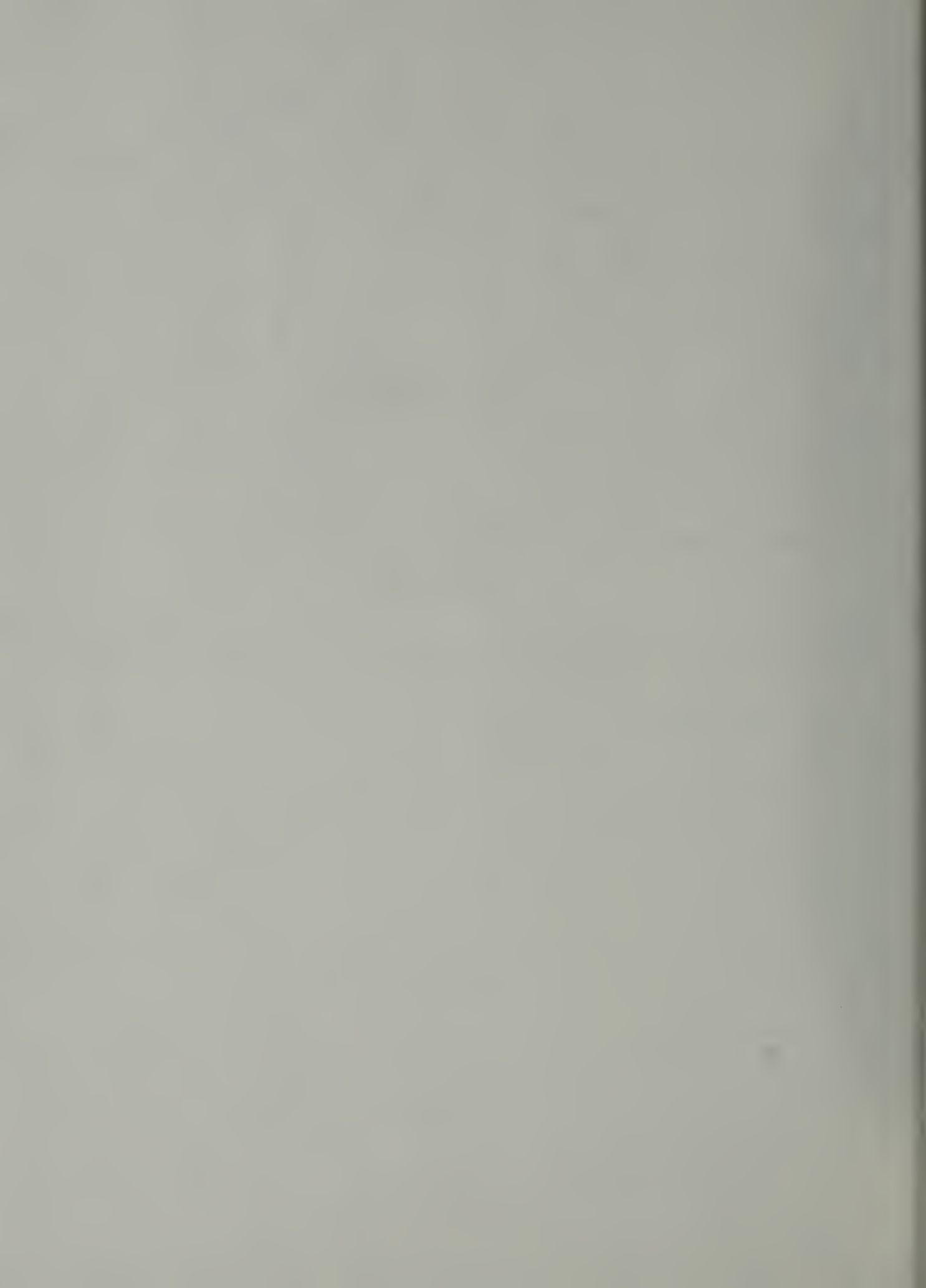
PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

SHERMAN E. ROODZANT, Member and Chairman
California Waste Management Board



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SHERMAN E. ROODZANT, Member and Chairman,
California Waste Management Board

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Next Governor's Appointee appearing today, Sherman Roodzant, Member and Chairman of the California Waste Management Board.

MR. ROODZANT: Thank you, Mr. Chairman. I'm Sherman E. Roodzant, for the record.

CHAIRMAN ROBERTI: We'll ask you the same question we ask all the Governor's Appointees, and that is: Why do you feel you're qualified to assume this position?

MR. ROODZANT: Thank you, Mr. Chairman and distinguished Members of this Committee.

I am privileged to come before you today to state my qualifications for the record. The Chairmanship of the California Waste Management Board requires some unique experience and capabilities which I think I bring to this position.

Following my service in Vietnam in the early -- late '60s, I served in the private sector in data processing, all the way from a programmer analyst, to sales manager, to the vice president in charge of business affairs and legal affairs for a major software company in the Los Angeles area.

I then went back to the U.S. House of Representatives where I served as a committee staff director under the tutelage of former Chairman of the great committee, Olin "Tiger" Teague from Texas, where I learned the legislative process and the processes of government.

I then went into the quasi-private sector and public sector in representing the nation's veterans when I served as

1 National Commander of the Disabled American Veterans in 1981 and
2 '82.

3 So, I think I bring a unique experience. The waste
4 management in California is spread across the public and private
5 sectors, as you well know, and requires sensitivity towards the
6 profit motives of businessmen; it requires a sensitivity to the
7 public officials who in many cities represent waste management
8 operators; and it requires concern and compassion for our fellow
9 human mankind that we look out for their public health and safety
10 that you have set in law.

11 Our Board has some new leadership, and I bring you also
12 the greetings of two other members who you have before you today,
13 Mr. Stevens and Mr. Brown, who weren't required to appear before
14 you, but I can tell you without any shadow of doubt, in the last
15 six months we've been operating there under their leadership as
16 well as the previous Board members, we're looking at waste
17 management more enforcement; we're looking at it with a more
18 positive attitude of helping solve problems.

19 You've been kind enough to bless us with staff
20 resources, and budget resources that we do look at waste
21 management from a solution-oriented perspective, and we hope to
22 carry that fine record in the future.

23 We're also anxious to work with you and the Governor's
24 Office on the proposed reorganizations that are before us. It
25 was my perception from the first month there that reorganization
26 was long overdue. We look forward to working with you and
27 bringing that to fruition. All the proposals that we've seen are
28

1 bold, new promises, and I think something that needs to be done
2 if we're going to mobilize the bureaucracy to the best of the tax
3 payers' resources to solving our waste management problem.

4 I'd be happy to answer any questions you may have, our
5 being committed to the laws that you've set before us to operate
6 under, and I look forward to working with you in the future.

7 CHAIRMAN ROBERTI: Any questions of Mr. Roodzant?
8 Senator Petris.

9 SENATOR PETRIS: I want to go over a couple areas, or
10 three or four, because it's a very important job. I don't know
11 why you'd want to take it, but if you do, that's fine. It's a
12 very difficult one.

13 First of all, I guess I should ask, in view of the
14 preceding discussion, how you stand on toxic disposal, but that's
15 not in your bailiwick; is it?

16 MR. ROODZANT: Not directly, Senator. We do have some
17 responsibility in household toxics.

18 SENATOR PETRIS: Which are increasing all the time.

19 MR. ROODZANT: Yes, they are.

20 SENATOR PETRIS: You mentioned reorganization. The
21 Governor in his press release indicated that the functions now
22 are scattered throughout some 30 different agencies, state and
23 local.

24 From your study of the plan, is the aim to make it more
25 efficiently consolidated so that the licensee or the applicant
26 doesn't have to jump around from pillar to post before finding
27 out whether a petition will be granted or not?
28

1 MR. ROODZANT: Well, there's no doubt, Senator, that's
2 the aim and the goal, and I think it's a bold step, as I
3 mentioned earlier. It's bringing resources of the Water
4 Resources Control Board, as well as the California Waste
5 Management Board and Health Services Toxics Division together,
6 and that's in itself a big step.

7 SENATOR PETRIS: Will that improve enforcement?

8 MR. ROODZANT: It should, sir, yes.

9 SENATOR PETRIS: Isn't that antibusiness?

10 MR. ROODZANT: No, sir.

11 SENATOR PETRIS: By definition?

12 MR. ROODZANT: No, I think it's good for business that
13 we are strong enforcers.

14 SENATOR PETRIS: That ain't the way I hear it in the
15 Governor's speeches lately.

16 MR. ROODZANT: It's been my experience, and most of the
17 Board members I work with are people who have been in the
18 business sector who recognize that we have to be strong enforcers
19 if we expect to do business and live in this world.

20 SENATOR PETRIS: If you're going to be enforcers, it
21 means you're going to be more firm with the business people who
22 are in this field; isn't that right?

23 MR. ROODZANT: Yes, sir, firm but fair.

24 SENATOR PETRIS: What is the present status of the
25 reorganization? Are you considering it officially as an agency
26 that is being asked to have some input, or has that already
27 passed? Are you being bypassed?
28

1 MR. ROODZANT: No, we've been involved and still are
2 involved in a limited way in the reorganization proposal. As you
3 know, the plan has pretty well been set forth, but our staff
4 continues to work with the staff of Secretary Swoap in fine
5 tuning the plan.

6 SENATOR PETRIS: You haven't been in this business
7 before?

8 MR. ROODZANT: No, sir.

9 SENATOR PETRIS: What do you think is the most urgent
10 problem that the Board has to tackle this year?

11 MR. ROODZANT: I think it's a similar problem as the
12 hazardous problem we're talking about, and that's the siting
13 issue. We're increasingly finding out that we're running out of
14 landfill space, or space to even put a recycling center. Nobody
15 wants anything that's potentially pollutant-oriented in their
16 backyard.

17 SENATOR PETRIS: Does that include incinerators or
18 burning for energy?

19 MR. ROODZANT: Yes.

20 SENATOR PETRIS: Nobody wants those?

21 MR. ROODZANT: Nobody knows that better than Senator
22 Craven, who has a problem right now in his district with one our
23 Board has supported for a long time.

24 SENATOR PETRIS: How's that going to be solved?

25 MR. ROODZANT: I think it needs to be solved through
26 public education and responsible leadership on behalf of those
27 who represent the state. Technology can do some great things,
28

1 and if we can put men on the moon, I believe that we can operate
2 safe incinerators and other technologies.

3 I think this is another bold step in the Governor's plan
4 and some of your colleagues in the Legislature who have
5 recognized that we can devote some science and technology to
6 solving this problem and should.

7 SENATOR PETRIS: How is that going to be done in his
8 plan?

9 MR. ROODZANT: It's a whole separate division of
10 technology has been set forth in his plan as well as a scientific
11 and technological advisory body.

12 SENATOR PETRIS: What's the funding for that?

13 MR. ROODZANT: I don't know. I do not know, sir.

14 SENATOR PETRIS: So, you'd say that the main obstacle to
15 siting is local --

16 MR. ROODZANT: Local acceptance.

17 SENATOR PETRIS: Just like putting a prison in a
18 community, everybody wants more prisons, but they don't want them
19 here. It's a tough problem, isn't it?

20 MR. ROODZANT: Yes, sir.

21 SENATOR PETRIS: Or a mental health facility, whatever.

22 MR. ROODZANT: Yes, sir.

23 SENATOR PETRIS: How many facilities do we have now for
24 using energy?

25 MR. ROODZANT: Currently operational we only have one up
26 in Lassen Community College. Two weeks ago, the ground was
27 dedicated and broken in Commerce in the Los Angeles County area.
28



1 SENATOR PETRIS: Was that done by your agency, or is
2 that done by the Energy Department, or both together?

3 MR. ROODZANT: In the case of Lassen, both the Energy
4 Commission and our Board are participants. In the case of the
5 Commerce project, as far as I know it's just our Board.

6 SENATOR PETRIS: What do you have on the boards for the
7 future? Are there a lot of new ones coming up?

8 MR. ROODZANT: There's probably 40 of them on the
9 drawing board; however, as far as our Board's involvement, we
10 have no funds available for future grants for that project. It's
11 mainly a staff and technology assessment and permitting function
12 of ours now.

13 SENATOR PETRIS: What do you anticipate personally as a
14 member doing if these plans are made available? Do you intend to
15 push for it and persuade the Governor to provide the funding and
16 persuade the Legislature?

17 MR. ROODZANT: Yes, sir. I think the Governor has
18 already indicated his support and interest for waste and energy
19 facilities.

20 SENATOR PETRIS: Is the lack of money just due to the
21 fact that it isn't time yet to provide the money because of
22 preliminary work?

23 MR. ROODZANT: I think there was a multitude of factors.
24 I think probably the major problem that's been facing us the last
25 number of years, the one that needs to be the most urgently
26 resolved, is the actual siting problem. We can pump all the
27 money in the world into waste and energy facilities, but unless
28

1 we can get the public to accept that these are safe and
2 necessary, we're throwing our money away.

3 And I'm not saying we threw our money away before
4 because of the fact we now demonstrated and are demonstrating up
5 in Lassen, and hopefully in Commerce in the next couple of years,
6 that they are safe.

7 But the first thing we've got to resolve is siting, and
8 right now siting is, as you know, left up to local government.

9 SENATOR PETRIS: Should it be changed?

10 MR. ROODZANT: In my perception, yes, sir.

11 SENATOR PETRIS: Tell them they can't dump beyond their
12 boundaries? They've got to dump everything within the city or
13 county?

14 MR. ROODZANT: I don't know that we should go that far.

15 SENATOR PETRIS: Wouldn't they turn to burning if you
16 did that, and then use the energy?

17 MR. ROODZANT: I'm sorry?

18 SENATOR PETRIS: Wouldn't that induce them to turn to
19 more conversion to energy by doing more burning?

20 MR. ROODZANT: Yes, it would, but I'm probably fearful
21 that there's some areas of the state that it is almost physically
22 impossible to do it within the city limits. I'm not that well
23 attuned with city boundaries, but heavy metropolitan areas, you
24 probably wouldn't want to put a major incinerator in. But in the
25 outlying areas of that metropolitan area, certainly you could, or
26 a small one.

1 SENATOR PETRIS: Is transportation to a site one of the
2 problems? The cost of transportation?

3 MR. ROODZANT: The cost of transportation is a big
4 problem.

5 SENATOR PETRIS: As I understand, there's still plenty
6 of canyons and things available in the hill country, but there's
7 no roads into them in some places.

8 Is that a big factor in the cost?

9 MR. ROODZANT: That's the biggest factor is the
10 transportation cost.

11 SENATOR PETRIS: How about recycling? What do you have
12 on the board for that?

13 MR. ROODZANT: We're strong proponents of recycling. We
14 have recycling programs going on all over the state.

15 SENATOR PETRIS: Are they on the increase?

16 MR. ROODZANT: Yes, they are. At one time our Board
17 funded many recycling centers through General Fund and
18 Environmental License Fund money. Those projects are now coming
19 to fruition such that the private sector has picked up, in many
20 cases, recycling and recognize it as good business.

21 SENATOR PETRIS: Now, on the local pressures. I think
22 you hit a very sensitive point.

23 There's a referendum going on now down -- well, I guess
24 it's the Craven problem. Not the Craven problem, but in Senator
25 Craven's district.

26 SENATOR CRAVEN: Either way.

27
28

1 SENATOR PETRIS: I understand there's a bill from an
2 assemblyman in my area, in my county, that would prohibit
3 referendum on that subject because of the urgency, and the health
4 problems, and related things that you've described so well.

5 What is your position on going in that direction?

6 MR. ROODZANT: I'm a strong proponent of that facility
7 down there, but I'm one that doesn't like to meddle in the
8 initiative process. And I understand the citizens' rights down
9 there, and I must say that our Board two weeks ago voted to
10 support that bill. However, that's not my personal feeling.

11 I do support the project. I support the public's
12 concern of the right to seek redress through the initiative
13 process.

14 I don't think their initiative is proper. I think it
15 should be aired in the courts.

16 SENATOR CRAVEN: It's defective.

17 SENATOR PETRIS: Pardon me?

18 SENATOR CRAVEN: The initiative is probably defective.

19 SENATOR PETRIS: If the initiative's defective, they can
20 beat it on that basis.

21 We're caught in a terrible bind there; aren't we? On
22 the one hand, we are stopped by the locals from even local
23 activity. It isn't that you're stopped. The local initiative,
24 by local governments, says: We're going to site the thing here,
25 and people will get up in arms, and they run to an initiative,
26 and they defeat it; they dump it, if you'll pardon another bad
27 pun.
28

1 Now, how do we get out of that bind? Fortunately,
2 there's a defect. Maybe that's a way out, and people will see
3 it.

4 SENATOR CRAVEN: Of course, I said that. I'm really not
5 qualified to say that, but the court will make that determination
6 eventually.

7 SENATOR PETRIS: Why do we want to drag the courts into
8 this? There are critics of the courts saying they're sticking
9 their nose into too many things now. Why pull the courts into
10 it? Why can't we solve it without running to court?

11 Senator Doolittle doesn't want us running into court all
12 the time.

13 SENATOR CRAVEN: The proponents are responsible for the
14 court action. They're suing the initiative.

15 SENATOR PETRIS: It's a common device. You have a
16 disagreement, you say: Well, we'll let the courts settle it.
17 Then the courts settle it, and people say: What are the courts
18 doing sticking their nose in this? What have they got to do with
19 dump sites? None of their damn business.

20 I hear this increasingly every day. Why can't we solve
21 it, you know, some other way?

22 SENATOR CRAVEN: Well, this is a very, very simple issue
23 that has become very complicated. The city in which this is
24 involved, San Marcos, through the Planning Commission as well as
25 the Council, has endorsed the project; the County of San Diego
26 has endorsed the project; and Sherm's outfit has also done the
27 same thing.
28

1 The incongruous part of it is the initiative process is
2 now being challenged, but the initiative is drawn in such a
3 manner as to say that you have to have a prototype of this plant
4 here in the state of California before you can operate the plant
5 envisioned. There is no prototype, so that to me is a defect in
6 it.

7 SENATOR PETRIS: Well, I'm a little spooked by the idea
8 of saying to the people: You can't vote on certain subjects.
9 Pretty soon, we'll have 100 subjects, and that's a little risky.
10 I'm pretty nervous about saying that. I'm very nervous about
11 that myself.

12 MR. ROODZANT: That's my position.

13 SENATOR PETRIS: But how do we solve it? That's your
14 baby.

15 Final question, litter. To what extent is your agency
16 involved in the ordinary highway litter problem?

17 You are involved with the organized waste collection,
18 garbage collection, but what about the unorganized and massive
19 litter? Do you have anything to do with that, trying to help us
20 on that?

21 MR. ROODZANT: Well, as many of you know --

22 SENATOR PETRIS: And should you, if you're not?

23 MR. ROODZANT: It's an overwhelming problem. I'm happy
24 to point out that your distinguished colleague, Senator Mello, is
25 sponsoring a bill that our Board is very close to.

26 Litter is a major concern of ours because it is part of
27 waste management. We're right now, through the Senator's bill as
28 well as through some of our own initiative, putting together --

1 SENATOR PETRIS: How about the bottle bill? Have you
2 taken a position on that?

3 MR. ROODZANT: The Board has taken varying positions on
4 the bottle bill in the past. And my personal belief is that it's
5 none of our business as a Board.

6 SENATOR PETRIS: Is there a current position?

7 MR. ROODZANT: No, Senator.

8 SENATOR PETRIS: Last question: You indicated you
9 haven't served in this area before.

10 Do you think that disqualifies you?

11 MR. ROODZANT: No, in fact, I think it probably makes me
12 more qualified.

13 SENATOR PETRIS: An advantage?

14 MR. ROODZANT: I come in with no preconceived notions.
15 I knew nobody in the industry before; I knew nobody operating in
16 the public sector in this field.

17 SENATOR PETRIS: You had no mortgages on your back.

18 MR. ROODZANT: I've made my own decisions.

19 SENATOR PETRIS: I think that's a good answer.

20 It's just a common criticism of Governor's Appointees,
21 depending on who the critic is and who the Governor is, that:
22 We're not going to support so-and-so because he's had no
23 experience in this field.

24 I think we lose a lot of good people that way who are
25 driven away by that threat. I see nothing wrong with having you
26 serve on this without a big long list of credentials of having
27 served at some local level or being in the business.
28

1 I think your answer is a splendid one. I wish you well.
2 Thank you.

3 CHAIRMAN ROBERTI: Senator Doolittle.

4 SENATOR DOOLITTLE: Mr. Roodzant, as I discussed
5 privately with you, I'm interested in additional to these waste
6 energy facilities the waste to agricultural products facilities,
7 which the state of Kentucky has.

8 What role could the Board play in helping to get one of
9 those facilities tried out in California?

10 MR. ROODZANT: The Kentucky facility you're referring
11 to, I believe, Senator, is going to require tremendous capital
12 investment. From my limited memory, as I mentioned to you, we
13 had them before our Board four or five months ago. That project,
14 I believe, is floundering today.

15 Our Board has supported composting, which is what that
16 project really is. There appears to be a question of whether
17 composting to the degree that they're doing it in Kentucky has a
18 real market value. It's market driven.

19 SENATOR DOOLITTLE: I'd like to get your input in
20 solving a Sacramento problem, where they're talking about
21 expanding the size of the local dump, and some problems related
22 to that.

23 This kind of new technology, either waste energy or
24 composting, is a thing of the future and, I think, benefits
25 everybody.

26 I'd like to work with your Board in trying to come up
27 with a solution.
28

1 MR. ROODZANT: We look forward to that, Senator.

2 SENATOR DOOLITTLE: Thank you.

3 SENATOR CRAVEN: Does anybody know where the Kentucky
4 project is located?

5 MR. ROODZANT: I don't remember.

6 SENATOR DOOLITTLE: I don't, either.

7 SENATOR CRAVEN: Just a point of information.

8 CHAIRMAN ROBERTI: Any further questions? Hearing none,
9 do I hear a motion?

10 SENATOR CRAVEN: Mr. Chairman, I would move Mr.
11 Roodzant's confirmation to the Floor.

12 CHAIRMAN ROBERTI: Senator Craven moves Mr. Roodzant's
13 confirmation be recommended to the Floor.

14 Any opposition? Seeing none, the Secretary will call
15 the roll.

16 SECRETARY WEBB: Senator Doolittle.

17 SENATOR DOOLITTLE: Aye.

18 SECRETARY WEBB: Senator Mello.

19 SENATOR MELLO: Aye.

20 SECRETARY WEBB: Senator Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Senator Craven.

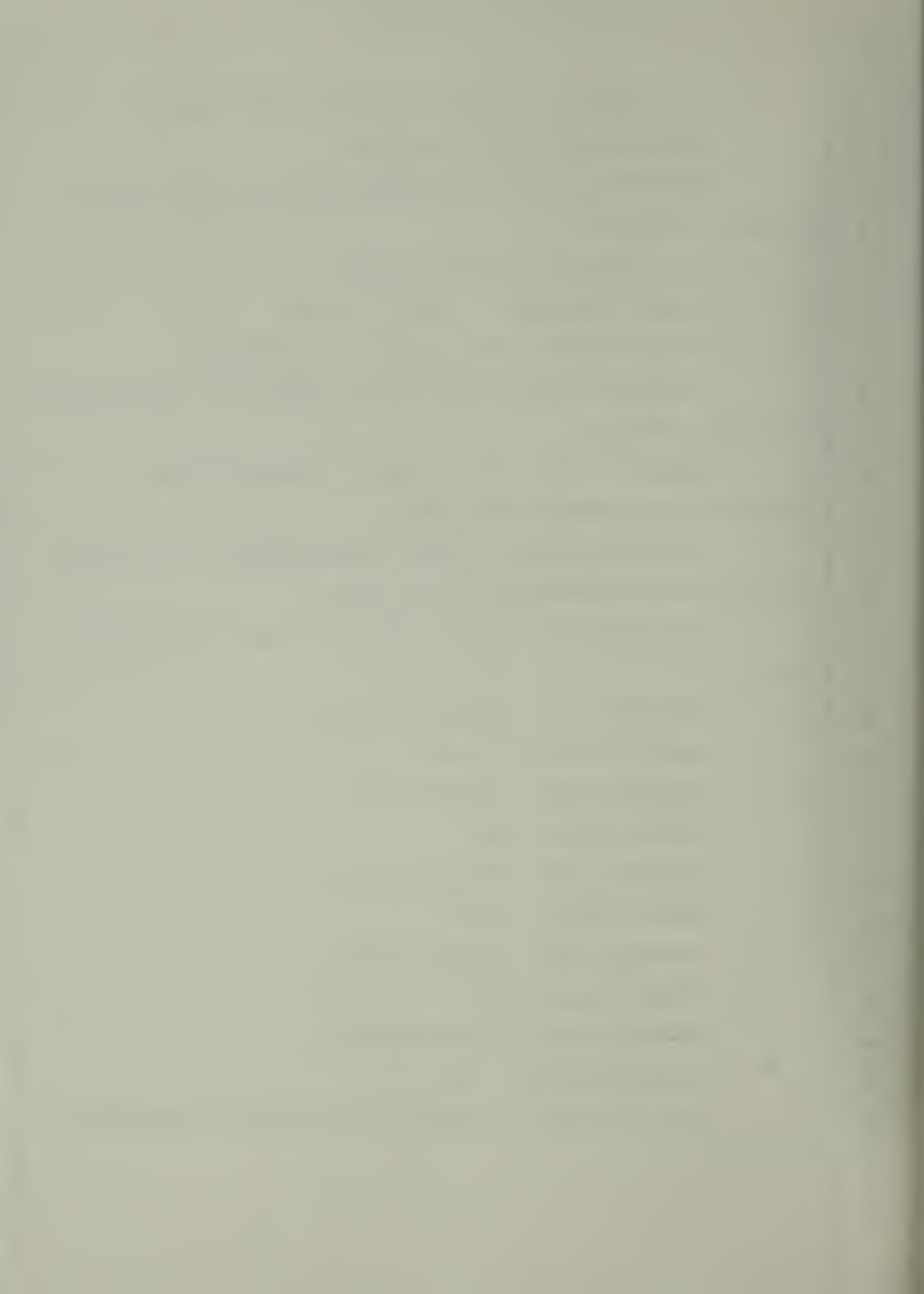
23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 The vote's five to nothing; confirmation recommended to
27 the Floor.

28



1 Congratulations.

2 MR. ROODZANT: Thank you, Mr. Chairman and Members.

3 (Thereupon this portion of the Senate
4 Rules Committee was terminated at
5 approximately 3:00 P.M.)

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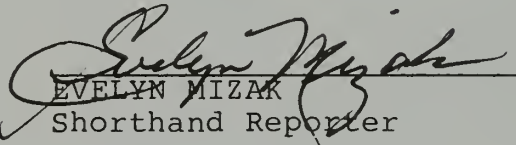
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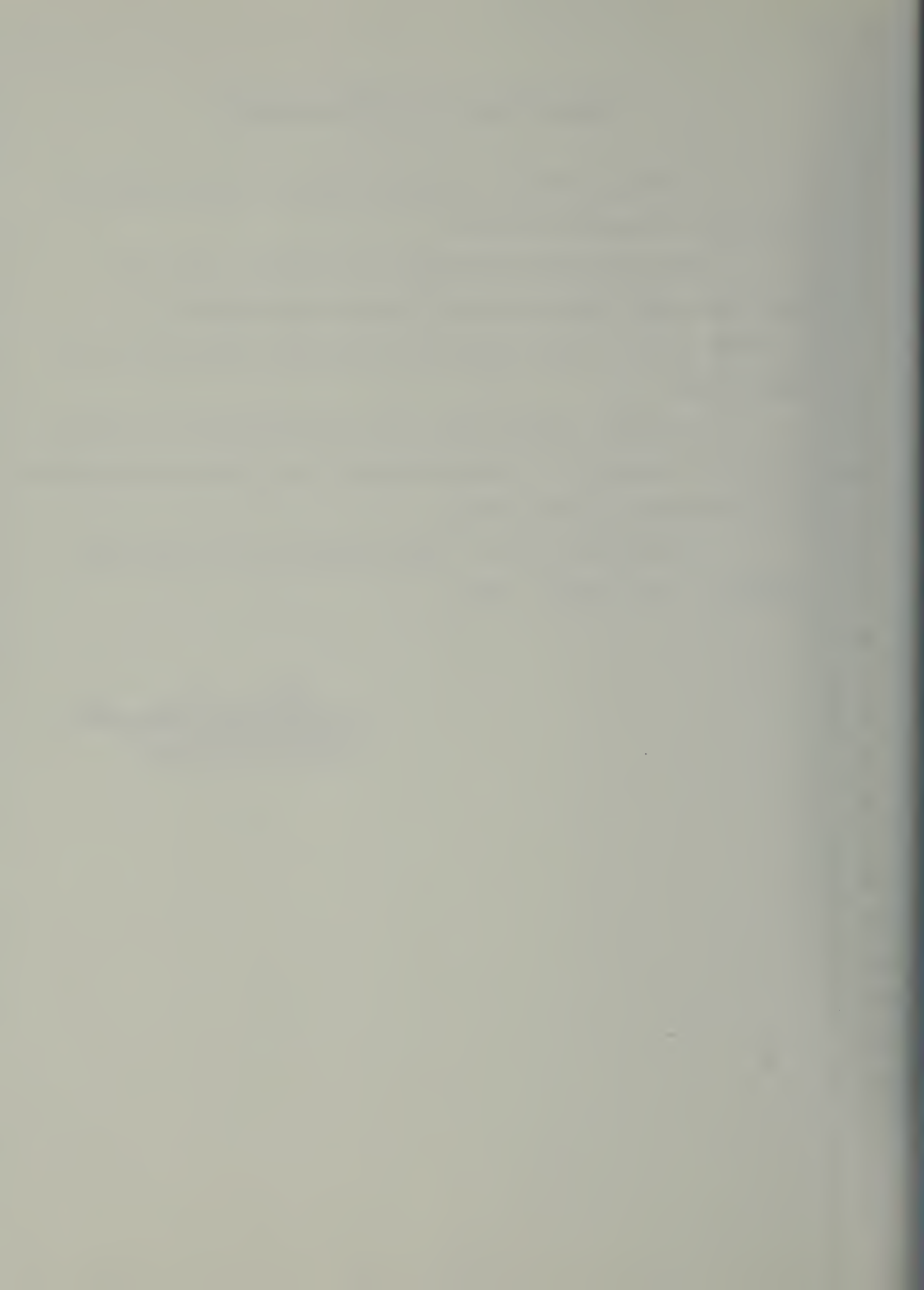
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21st day of March, 1985.


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27 Shorthand Reporter
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SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

GORDON COLOGNE, Member,
California Water Commission

TED FINSTER, Member,
State Water Resources Control Board

CARLA GOODMAN, Deputy Director,
Employment Development Department

CLAIR HILL, Member,
California Water Commission

BRUCE JANIGIAN, Deputy Director,
Employment Development Department

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Now Governor's Appointees appearing today. We're honored to have our former colleague with us, Gordon Cologne, Member of the California Water Commission.

How are you, Gordon? We'll ask you the same question that we ask everybody: Why you feel you're qualified to assume this position? We'll assume you've got a safe answer.

MR. COLOGNE: I spent a little while in the Senate as Chairman of the Senate Water Committee. That ought to give me some expertise, a little bit, anyway.

CHAIRMAN ROBERTI: Well, we think you're an outstanding appointee.

MR. COLOGNE: Thank you, sir.

CHAIRMAN ROBERTI: I'm happy you're from Southern California. You've lived in the North long enough.

MR. COLOGNE: I'll tell you real honestly, the Governor has some reluctance. He's trying to balance the Commission. When I asked for the appointment, he said that was the only reservation he had, and he is trying to balance the Commission.

CHAIRMAN ROBERTI: I think when he assumed office, I think it was tilted slightly with a majority of Northern members. I don't know how it is now. I remember it was an issue on the Senate Floor.

Is there any opposition to Mr. Cologne's appointment?

1 SENATOR CRAVEN: Move the recommendation.

2 CHAIRMAN ROBERTI: Senator Craven moves confirmation,
3 and the Secretary will call the roll.

4 SECRETARY WEBB: Senator Doolittle.

5 SENATOR DOOLITTLE: Aye.

6 SECRETARY WEBB: Senator Mello. Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY WEBB: Senator Roberti.

11 CHAIRMAN ROBERTI: Aye.

12 The vote is four to nothing, confirmation is recommended
13 to the Floor.

14 Congratulations.

15 MR. COLOGNE: Thank you.

16 CHAIRMAN ROBERTI: Ted Finster, Member of the State
17 Water Resources Control Board.

18 MR. FINSTER: Thank you, Mr. Chairman.

19 CHAIRMAN ROBERTI: Mr. Finster, we'll ask you the same
20 question: Why you feel you're qualified to assume this position?

21 MR. FINSTER: The position that I was appointed to by
22 the Governor for the Water Resources Control Board requires the
23 registration of civil engineer of the State of California, and
24 also an engineer familiar with sanitary engineering.
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1 I did graduate from the University of California in
2 sanitary engineering in 1948. Subsequent to that time, I served
3 with the County of Orange for three years as a sanitary engineer,
4 the County of San Diego for nine months as a sanitary engineer,
5 prior to going into private practice for some 29 years with a
6 private consulting firm and spending most of my time in the field
7 of water and sanitation.

8 CHAIRMAN ROBERTI: If you had to pick one water quality
9 issue that demands our immediate attention, which one would you
10 choose?

11 MR. FINSTER: Obviously toxics.

12 CHAIRMAN ROBERTI: Does Kesterson come within the
13 purview of the State Water Resources Control Board?

14 MR. FINSTER: That's correct. I was on the Board at the
15 time the --

16 CHAIRMAN ROBERTI: How did you vote on it?

17 MR. FINSTER: I voted for the order.

18 CHAIRMAN ROBERTI: Are there any conditions under which
19 you would think that further irrigation waters flowing into
20 Kesterson should be cut off immediately?

21 MR. FINSTER: No, we felt during the testimony, some 25
22 hours of testimony, we made a determination that there was a
23 problem existing there. We made a decision and a firm decision
24 that we would give the Bureau five months to come up with a plan
25 and three years to resolve it.

1 CHAIRMAN ROBERTI: You don't speculate there's any new
2 data as far as toxic level of selenium?

3 MR. FINSTER: Not that I know of since this last
4 hearing.

5 CHAIRMAN ROBERTI: Any other questions?
6 What kind of ground water monitoring program currently
7 is in effect?

8 MR. FINSTER: In what respect, sir?

9 CHAIRMAN ROBERTI: As far as toxic levels?

10 MR. FINSTER: A lot of our permits that are issued and
11 the conditions we place on some of the discharge requirements we
12 have require ground water monitoring in specific instances.

13 Is that what you're referring to?

14 CHAIRMAN ROBERTI: Yes.

15 Do you favor more stringent state regulations as far as
16 ground water?

17 MR. FINSTER: I think there probably are going to be
18 some requirements in the future regarding toxic waste and ground
19 water monitoring. We feel right now, or at least I personally
20 feel, having on the Board only for about eight months, that there
21 are sufficient bills available and laws available that will
22 control the monitoring.

23 CHAIRMAN ROBERTI: Any further questions? Any
24 opposition?

25 SENATOR CRAVEN: Move confirmation to the Floor.
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1 CHAIRMAN ROBERTI: Senator Craven moves confirmation do
2 pass and to the Floor.

3 Secretary will call the roll.

4 SECRETARY WEBB: Senator Doolittle.

5 SENATOR DOOLITTLE: Aye.

6 SECRETARY WEBB: Senator Mello. Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY WEBB: Senator Roberti.

11 CHAIRMAN ROBERTI: Aye.

12 The vote is four to nothing, confirmation is recommended
13 to the Floor.

14 Congratulations.

15 MR. FINSTER: Thank you very much, Senator. I
16 appreciate it.

17 CHAIRMAN ROBERTI: Next appointment is Ms. Carla
18 Goodman, Deputy Director of the Employment Development
19 Department.

20 Ms. Goodman, we'll ask you the same question: Why you
21 feel you're qualified to assume this position?

22 MS. GOODMAN: Thank you, Senator Roberti.

23 I'm being appointed to the position of Deputy Director
24 of Communications of the Employment Development Department.

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1 During the past 12 years that I've been in Sacramento, I
2 have developed broad-based experience in the field of
3 communications, and I've done so by planning, managing, executing
4 communications programs for employers in the private sector,
5 education, California Legislature, and in state government. This
6 expertise includes writing, media relations, marketing, public
7 relations, and of course employee communications.

8 I believe my adaptability to different professional
9 environments and a basic understanding of how government and
10 business work on a day-to-day basis are two primary assets I can
11 bring to E.D.D.

12 CHAIRMAN ROBERTI: Very good.

13 Any questions?

14 SENATOR PETRIS: I have one or two.

15 CHAIRMAN ROBERTI: Senator Petris.

16 SENATOR PETRIS: We have a lot of refugees living in
17 California. I've been attending more and more functions in my
18 district, resettlement programs. And a lot of them are doing
19 very well, but there are some who still have a lack of
20 information.

21 Do you have any thoughts or plans about how you reach
22 this particular groups, the refugees in California who are
23 seeking employment and are not used to our system?

24 How does the Department get hold of them to let them
25 know that they should come in and register there and make
26 themselves available for jobs that might be on their list?

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1 MS. GOODMAN: Senator, I'm not aware of a specific
2 program that addresses itself to refugees. But all of the
3 programs made available through the Employment Development
4 Department are made available to all job applicants.

5 It's my understanding with our job order sharing system,
6 automated in the Bay Area at this time, that will assist us in
7 being able to provide more applicants with more job opportunities
8 quicker, faster, and more efficiently.

9 SENATOR PETRIS: How are they normally informed, through
10 press releases?

11 MS. GOODMAN: We have very active communication programs
12 in our local areas, and that is achieved by our district
13 managers. We're also supported by what we call employment
14 advisory groups or employment advisory councils, and these are
15 associations of business persons who advise the local Departments
16 on how best they can share information about the programs in
17 their communities.

18 SENATOR PETRIS: Thank you.

19 CHAIRMAN ROBERTI: Any further questions? Any
20 opposition.

21 SENATOR CRAVEN: Move.

22 CHAIRMAN ROBERTI: Senator Craven moves. Secretary will
23 call the roll.

24 SECRETARY WEBB: Senator Doolittle.

25 SENATOR DOOLITTLE: Aye.
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1 SECRETARY WEBB: Senator Mello. Senator Petris.

2 SENATOR PETRIS: Aye.

3 SECRETARY WEBB: Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Senator Roberti.

6 CHAIRMAN ROBERTI: Aye.

7 The vote is four to nothing, confirmation's recommended
8 to the Floor.

9 Congratulations.

10 MS. GOODMAN: Thank you.

11 CHAIRMAN ROBERTI: Clair Hill, Member of the California
12 Water Commission.

13 Mr. Hill, we'll ask you the same question we asked the
14 others: Why you feel you're qualified to assume this position?

15 MR. HILL: Well, I have been involved in the water
16 program all my professional career. I've been 19 years on the
17 Water Commission and its predecessor, the California Water
18 Resources Board. I was on the Board during the development of
19 the California Water Plan, was Chairman for the last three years,
20 and have been involved in it all that time.

21 Besides that, I come from the area of the state where
22 the water comes from, and I'm very familiar with it, the whole
23 state.

24 CHAIRMAN ROBERTI: You balance off Mr. Cologne?
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1 MR. HILL: Yes, I guess that's a good statement. He's
2 about 20-30 miles from the Mexican border, and I'm 100 miles from
3 Oregon.

4 CHAIRMAN ROBERTI: Good cross-section.

5 Any questions of Mr. Hill?

6 SENATOR CRAVEN: Move confirmation.

7 CHAIRMAN ROBERTI: Senator Craven moves confirmation of
8 Mr. Hill to the State Water Commission.

9 Any opposition in the audience?

10 You have a long list of support, so I feel that probably
11 precludes any questions.

12 Secretary will call the roll.

13 SECRETARY WEBB: Senator Doolittle.

14 SENATOR DOOLITTLE: Aye.

15 SECRETARY WEBB: Senator Mello. Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY WEBB: Senator Craven.

18 SENATOR CRAVEN: Aye.

19 SECRETARY WEBB: Senator Roberti.

20 CHAIRMAN ROBERTI: Aye.

21 The vote is four to nothing, confirmation is recommended
22 to the Floor.

23 Congratulations.

24 MR. HILL: Thank you, Senator Roberti.

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1 CHAIRMAN ROBERTI: Mr. Bruce Janigian, Deputy Director
2 of the Employment Development Department.

3 Mr. Janigian, We'll ask you the same question: Why you
4 feel you're qualified to assume this position?

5 MR. JANIGIAN: Thank you, Mr. Chairman.

6 Distinguished Members of the Senate Rules Committee, I'm
7 very pleased to be present today, to have the opportunity to
8 present my qualifications for the position of Deputy Director for
9 Legal Affairs for the Employment Development Department.

10 I have been very fortunate to have enjoyed a wide
11 ranging legal practice spanning a variety of complex legal
12 issues. Following my graduation as a Phi Beta Kappa from the
13 University of California at Berkeley and Hastings College of Law,
14 I was assigned to active Naval duty as a prosecutor, and
15 subsequently as a criminal defense counsel with the Navy Judge
16 Advocate General's Corps. Following two years in these
17 capacities, I was appointed as Commissioner of the Navy and
18 Marine Corps Appellate Court System in Washington, D.C., where I
19 was awarded the Navy Achievement Medal.

20 In 1979, I left active Naval service to occupy the
21 position of counsel for the foreign assistance program with the
22 Agency for International Development in Washington, D.C. In that
23 capacity, I prepared and negotiated foreign assistance agreements
24 of the United States, counseled major U.S. funded procurement and
25 contract actions, and advised on project development and
26 assistance policy.

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1 Traveling as a diplomat, I worked in the Middle East,
2 Africa, Asia and Central America. I awarded that agency's
3 Meritorious Honor Award for outstanding legal counsel.

4 While with A.I.D., I was awarded the LL.M. degree in
5 international and comparative law from the National Law Center at
6 George Washington University.

7 A member of the California bar since 1975, I returned to
8 California last August to assume this position of Deputy Director
9 for Legal Affairs and Chief Counsel. It's a challenging and
10 important position which I'm undertaking with enthusiasm.

11 Besides the credentials which I have previously stated,
12 my primary qualifications for this position are my desire to
13 serve the people of my home state of California, and my capacity
14 for hard work to that end.

15 I thank you again for the opportunity to present myself
16 at this hearing and will be pleased to try to answer any
17 questions you might ask of me.

18 CHAIRMAN ROBERTI: Any questions of Mr. Janigian? We
19 have a couple here.

20 Do you have any plans in the Department to limit
21 benefits to unemployed illegal aliens who have taxable earnings?

22 MR. JANIGIAN: We have no plans at this time to do that,
23 Senator. We had proposed regulations to that effect that were
24 submitted to the Office of Administrative Law, but have been
25 withdrawn at this time.

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1 CHAIRMAN ROBERTI: Do you have any system of identifying
2 illegal aliens?

3 MR. JANIGIAN: We have a procedure which is called a
4 guide card procedure, which is the verbal questioning procedure
5 that does ask information pertaining to citizenship.

6 CHAIRMAN ROBERTI: It's a specially provided card, or
7 what?

8 MR. JANIGIAN: That is a guidance to our field office
9 representatives.

10 CHAIRMAN ROBERTI: Any other questions? Is there any
11 opposition in the audience?

12 SENATOR CRAVEN: Move confirmation to the Floor.

13 CHAIRMAN ROBERTI: Senator Craven moves confirmation be
14 recommended to the Floor.

15 Secretary will call the roll.

16 SECRETARY WEBB: Senator Doolittle.

17 SENATOR DOOLITTLE: Aye.

18 SECRETARY WEBB: Senator Mello. Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Senator Craven.

21 SENATOR CRAVEN: Aye.

22 SECRETARY WEBB: Senator Roberti.

23 CHAIRMAN ROBERTI: Aye.

24 The vote is four to nothing, confirmation is recommended
25 to the Floor.

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1 Congratulations.

2 MR. JANIGIAN: Thank you, sir.

3 (Thereupon this portion of the Senate
4 Rules Committee Hearing was terminated
5 at approximately 3:30 P.M.)

6 --oo0oo--

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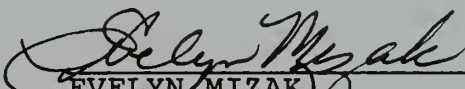
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25th

day of April, 1985.


EVELYN MIZAK
Shorthand Reporter

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APPEARANCES

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Governor's Appointee:

GARY STRONG
State Librarian

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Questions by SENATOR DOOLITTLE

Re: Computers

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Re: Access

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Questions by SENATOR PETRIS

Re: Length of Term

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Motion

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Questions by SENATOR PETRIS

Re: Literacy Campaign

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Re: Goal

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Re: Finding Students

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Re: Number of Students

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Re: Volunteer Tutors

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Committee Action

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Adjournment

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Certificate of Reporter

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Mr. Gary Strong, Governor's Appointee for State Librarian.

Mr. Strong, we'll ask you what we ask all the Governor's Appointees: Why you feel you're qualified to assume this position?

MR. STRONG: I was first appointed as State Librarian in 1980, confirmed by the Senate at that time, and reappointed by Governor Deukmejian in September of this last year.

I come to the State Library with a long background in professional library services and feel that the record that we have been able to put together in operation of the California State Library over the last five years, I hope, speaks for itself. We're very proud of that service program, the improvements, and the additional kinds of services that we are performing and providing to the libraries across the state, and also to the state government through the State Library itself.

A couple of highlights that I am most particularly proud of was the relocation of the temporary structures that the Legislature occupied to the campus of San Francisco State University, and reconstruction of those as the Sutro Library. That facility has been in place now for a little over two years. It's working well. It has solved a long-term problem, and in the long run has saved us about \$390,000 a year in rent that we would have been paying at the current market value in San Francisco for rental of space.

1 We are in the process of looking at bringing the State
2 Library into the early 20th Century, we hope, through automation
3 and through upgrade of our service program there.

4 The most exciting event, I think, is the California
5 Literacy Campaign in which we are, in a little less than a year
6 and a half, have brought just under 50 public library
7 jurisdictions statewide into the role of providing learning
8 services for adults who cannot read. That was supported by both
9 the Senate and the Assembly last year, and was signed as an
10 augmentation by the Governor.

11 This year, our effectiveness reviews shows that to be a
12 most effective program, and we are moderately expending it and
13 strengthening it.

14 CHAIRMAN ROBERTI: Senator Doolittle.

15 SENATOR DOOLITTLE: Are your catalogues kept on
16 computers?

17 MR. STRONG: At this point in time they are not. To
18 access the collections of the State Library requires a patron to
19 consult as many as 19 different separate card catalogues in the
20 State Library building alone.

21 Our proposal, which has gone to Finance now, would
22 recommend the integration of all of our bibliographic records
23 into one machine-readable data base that would allow access, not
24 only in the building, but from remote sites to one data base
25 similar to that that's used by the University of California.

26 SENATOR DOOLITTLE: So, would we conceivably here, on
27 our equipment, have access?
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1 MR. STRONG: Conceivably on your equipment, yes. The
2 capitol branch, which we have assumed operation of on the fourth
3 floor of this building within this last month, we have had for
4 the last couple of weeks, and will for another week or so, had
5 access to the Melville Catalogue at the University of California.
6 We have test loaded into that catalogue some 40,000 of our
7 bibliographic records. We estimate we have about 750,000, and
8 have been testing access to that catalogue, find it to be very,
9 very beneficial. But it would allow for access in the offices,
10 not only of the Legislature, but of state government and the
11 libraries across the state.

12 Our resources to this point in time have not been
13 available in such a manner.

14 SENATOR DOOLITTLE: Thank you.

15 CHAIRMAN ROBERTI: Any other questions? Senator Petris.

16 SENATOR PETRIS: What's the length of the term?

17 MR. STRONG: It's at pleasure.

18 SENATOR PETRIS: You were appointed in September, and
19 now reappointed?

20 MR. STRONG: I was appointed first in September of 1980
21 by Governor Brown..

22 SENATOR PETRIS: And reappointed last year?

23 MR. STRONG: That's correct.

24 SENATOR PETRIS: I see, for this go around.

25 CHAIRMAN ROBERTI: We just haven't gotten around to you.

26 SENATOR DOOLITTLE: I have a question on that.
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1 You mean even if it's at pleasure, why don't you just
2 stay in office instead of having to be reappointed?

3 CHAIRMAN ROBERTI: Many are term appointments, but
4 they're at pleasure.

5 SENATOR CRAVEN: He was appointed by two different
6 governors.

7 MR. STRONG: And the Governor's Office chose to make the
8 reappointment official, giving me status, if you will, within the
9 current administration as well.

10 I find it a particular pleasure to have been appointed
11 by both administrations. I've felt for a long time that an
12 office such as the State Librarian is and should be nonpartisan.
13 We serve both the Legislature and state executive branch, and I
14 think it is an excellent support to that concept of
15 nonpartisanship to the State Library's service and information
16 program.

17 CHAIRMAN ROBERTI: I think we agree with you, Mr.
18 Strong. Glad to have you with us today.

19 SENATOR CRAVEN: I think it's also certainly an
20 indication of the competence and leadership that Mr. Strong has
21 provided, and it would be with considerable pleasure that I would
22 recommend his confirmation to the Floor.

23 SENATOR PETRIS: May I ask another question.

24 I'm interested in the literacy campaign that your shop
25 really started. How's it going? Are more people learning to
26 read now or not?

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1 MR. STRONG: Most of our centers have been up. We've
2 funded projects in 47 public library jurisdictions. There are
3 some 100 communities involved, about 500-600 reading centers in
4 less than a year up and running. We now have in excess of 7500
5 adult learners enrolled and more and more all the time.

6 SENATOR PETRIS: Do you work through the adult education
7 facilities of the community colleges, or are yours separate from
8 theirs?

9 MR. STRONG: All of the above. About half of those 500
10 reading centers are in libraries; many are in churches; many are
11 in homes; some are in adult schools; some are on community
12 college campuses.

13 SENATOR PETRIS: Who does the teaching for your program?

14 MR. STRONG: It varies program to program. There are
15 volunteers involved; there are some paid reading specialists,
16 depending upon the project. The projects are designed at the
17 local level, and our requirement that we impose is that they
18 supplement the adult learning opportunities that are available in
19 a community, not replace them or compete with them. The problem
20 is so large that we do not want to be a party to any competition
21 or overlap in the services that are provided.

22 Additionally, to the students that are the adult
23 learners that are enrolled in the program, the public libraries
24 have referred adults to -- have made some 1500 referrals to other
25 education programs at this point.

26 SENATOR PETRIS: Is there a goal for eliminating the 4
27 million or reducing that number by a certain time?
28

1 MR. STRONG: We've talked a lot about that. At a few
2 thousand a year, it's going to be a long time.

3 We hope what we can do is encourage a lot of other
4 entities to become involved. We would hope, frankly, by the year
5 2000 that the efforts that are made at the local, state, and
6 national level, that we will certainly at least see a turn in the
7 direction of a literate America, if you will, a literate
8 California.

9 SENATOR PETRIS: How do you find the students? Through
10 advertising? Hopefully it's not in the newspapers.

11 (Laughter.)

12 MR. STRONG: We sit and laugh, but we actually had one
13 of our projects come back with the most beautifully designed
14 brochure and bus placards that they were going to use to recruit
15 learners to the program, and we suggested that might not be the
16 most appropriate route.

17 Our effectiveness review that we conducted a year ago,
18 the students tell us that they hear primarily from family, from
19 friends, from radio and television. And we've done extensive
20 radio and television advertising, a lot of our projects have.
21 And then the word of mouth.

22 The media has been most kind. We've had a major
23 editorial series on talk radio stations in Los Angeles and San
24 Francisco in the last year.

25 SENATOR PETRIS: How many students would you say are
26 involved at any given time in those 500 units?

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1 MR. STRONG: At any given time -- we have presently
2 between 6,000 and 7500. We're just getting quarterly reports,
3 and we'll have some updated figures very shortly.

4 SENATOR PETRIS: That really is just a trickle; isn't
5 it?

6 MR. STRONG: It's just a trickle.

7 SENATOR PETRIS: How can we enlarge on that?

8 MR. STRONG: I think we are at a point, in terms of our
9 efforts, where we're trying to build stability, and then we will
10 be ready a year from now to come back in with expansion to the
11 program for additional sites and additional tutors.

12 We also, through the good services of Assemblywoman
13 Teresa Hughes, are sponsoring a bill for students for literacy
14 this year that would provide funds for work study for college
15 students. We've found that our largest lack of tutors was in the
16 20-35 age group, and men, and minorities. And we felt that this
17 would be a mechanism of not only providing additional college
18 work study funding, but would also provide college students who
19 aspire to education, and teaching, and training to have some very
20 practical and real experience as part of their college
21 experience.

22 SENATOR PETRIS: What proportion of the teachers are
23 volunteers, and how do you get them?

24 MR. STRONG: Virtually all of our tutors are volunteers.
25 And they are trained. They volunteer through the local library
26 programs, and then we require a minimal training course in basic
27 reading, using -- and a local project may choose whatever method,
28

1 the Laubach, or Literacy Volunteers of America methods of
2 teaching. And they go through a 20-40 hour training course, and
3 then our paid coordinators in each of the projects follow up and
4 monitor the activities and the tutors. And if a tutor does not
5 follow through, then their volunteer experience with us is
6 terminated.

7 SENATOR PETRIS: Thank you.

8 CHAIRMAN ROBERTI: Any further questions?

9 Senator Craven has moved. Is there opposition to the
10 appointment?

11 Secretary will call the roll.

12 SECRETARY WEBB: Senator Doolittle.

13 SENATOR DOOLITTLE: Aye.

14 SECRETARY WEBB: Senator Mello.

15 SENATOR MELLO: Aye.

16 SECRETARY WEBB: Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY WEBB: Senator Roberti.

21 CHAIRMAN ROBERTI: Aye.

22 The vote is five to nothing. Mr. Strong's confirmation
23 is recommended to the Floor.

24 MR. STRONG: Thank you very much. I appreciated the
25 opportunity to appear.

26 (Thereupon this portion of the Senate
27 Rules Committee hearing was terminated
28 at approximately 3:20 P.M.)

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

2nd day of May, 1985.


EVELYN MIZAK
Shorthand Reporter



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17 2:00 P.M.

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25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman
SENATOR WILLIAM CRAVEN, Vice-Chairman
SENATOR JOHN DOOLITTLE
SENATOR MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

DARYL ARNOLD, Director,
California Exposition and State Fair
RALPH SCURFIELD, Director,
California Exposition and State Fair
FREDERICK DUDA, Member,
Public Utilities Commission
SYLVIA M. SIEGEL, Executive Director
Toward Utility Rate Normalization (T.U.R.N.)
SENATOR HERSCHEL ROSENTHAL, Chairman,
Senate Committee on Energy and Public Utilities

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Position on Deficit

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mr. Daryl Arnold, Director of the California Exposition and State Fair.

Mr. Arnold, we'll ask you what we ask all the Governor's Appointees who appear, and that is why you feel you're qualified to assume this position.

MR. ARNOLD: I'm Daryl Arnold, President of Western Growers Association.

You asked what, now?

CHAIRMAN ROBERTI: What we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

We know you, Mr. Arnold, but for the record.

MR. ARNOLD: I would assume I'd be qualified because I've been in agriculture, number one, all of my life. I've been a businessman all of my life, and it appears like maybe the Cal Expo Board needs some businessmen on the Board, with all the problem they've been going through. Plus the fact that all of my children have either been involved in 4-H or in FFA; in fact, my oldest son, who had the grand champion lamb, and I felt an obligation to the young people of this state, in this great state in agriculture, to have an agricultural fair the way I feel it should be put on.

CHAIRMAN ROBERTI: Currently Cal Expo is undergoing some financial difficulties.

1 Do you have any ideas as to how you would deal, or how
2 you plan to deal with trying to make it something closer to a
3 money making proposition?

4 MR. ARNOLD: Well, of course there are several things,
5 I'd think, that can be done and should be done at Cal Expo. It
6 has to be managed in a business like basis, and I sure don't want
7 to take anything away from the previous manager. Kirk Breed is a
8 friend of mine, and I like Kirk.

9 However, I don't think that he was the manager in how to
10 do things such as giving away the first prize of \$10,000 to the
11 grand champion steer, and then cutting it up for meat instead of
12 selling it to somebody who'd be willing to buy it. Such as the
13 racing going for 14 straight days, and every day after the 6th,
14 double time being paid to everybody there instead of breaking it
15 up. Such as getting agricultural people involved into donating
16 some of the agricultural products; like, I have volunteered to
17 get all the fruit and vegetables for nothing.

18 CHAIRMAN ROBERTI: I almost goofed when you talked about
19 the grand champion steer, because I was going to say: Why don't
20 you set it out for breeding?

21 (Laughter.)

22 MR. ARNOLD: That would be a little difficult. Maybe
23 we'd better get the grand champion bull; maybe we could do it
24 that way.

25 But I just think that in areas, that getting the people
26 more involved in Cal Expo are certainly more important. But I
27 think the big money, big money, is going to come from prudently

1 leasing the property around Cal Expo, developing the Cal Expo
2 lands, and leasing it out. I really believe that we can, in
3 fact, get it into a break-even situation.

4 I think I'd be remiss, though, Senator, saying that I
5 think the state, even if it cost them some money, needs to have a
6 State Fair if they believe in California and western agriculture
7 and western fairs.

8 CHAIRMAN ROBERTI: It strikes me, and maybe I'm wrong,
9 but all the addendum, not the agricultural aspect of the State
10 Fair, but the Expo aspects of the State Fair may be the greater
11 money loser.

12 Is that the case? Could you envision a streamlined
13 Fair?

14 MR. ARNOLD: I don't know how streamlined it's going to
15 get. You'll have to talk to Senator Greene about that side of
16 the coin.

17 He and I discussed at length, obviously, being from
18 agriculture I'm prejudiced it should be an agricultural fair.
19 Senator Greene definitely thinks it would bring in more people if
20 it was the affiliated industries to agriculture.

21 But I think both of them are need at a State Fair, but I
22 believe it can be.

23 CHAIRMAN ROBERTI: Any other questions? Senator Mello.

24 SENATOR MELLO: Mr. Chairman, I have a few. I've known
25 Mr. Arnold for his both work with agriculture and I think his
26 background can really help up here at the Fair, where I think
27 there's some real problems.

1 When Senator Roberti mentioned agriculture, I can recall
2 a few years back when William Penn Mott, who became President
3 Reagan's Park and Recreation Director, while he was director here
4 in California, he was trying to bring agriculture into the State
5 Fair, which I think should be a high priority.

6 Our local county fairs are really a hall mark for
7 exhibiting our agricultural products, amongst other things, but,
8 you know, what we see here at our State Fair is more of a, you
9 know, carnival-type atmosphere. And we really don't make it a
10 show place for agriculture and other types of business and
11 industry that we have.

12 What are your feelings about the direction in which the
13 State Fair will be going?

14 MR. ARNOLD: Obviously, you know where my feelings are
15 exactly, restating what you just said.

16 I'd hate to think that our State Fair would be anything
17 but primarily an agricultural fair and showing off the
18 agriculture and related industries, whether it be equipment and
19 other areas to the State Fair. I think that's where it should
20 be, and that's where I certainly, if I become a Director, would
21 recommend that it goes, in that direction.

22 SENATOR MELLO: Do you envision drawing on the different
23 counties around the state in order to have them participate in
24 bringing this great collection of California products to be on
25 exhibit at the Fair?

26 MR. ARNOLD: Absolutely, absolutely. I think that's --
27 whether it be the wine industry, and all the industries should be
28

1 on exhibit for all the people in California to recognize the
2 importance of California agriculture.

3 SENATOR MELLO: How do you view this very serious
4 problem of deficit and unpaid bills?

5 I think the State Fair is a public agency, and it's bad
6 enough when a private business fails to pay their bills; quite
7 often it happens, and they have to turn to bankruptcy. But when
8 a public agency fails to pay their bills, and has their power
9 turned off, like was the case here in the State Fair at Cal Expo,
10 my goodness, that is shocking to the general public.

11 How do you plan to cope with this situation?

12 MR. ARNOLD: Well, I totally agree, and, you know, I can
13 blame all sides, I guess, whether it be the administration and
14 our management over there. When we were not able to determine
15 how much we'd lost, the administration was saying: Prove; and
16 Finance was saying: Tell me how much you lost; and we couldn't.
17 So, we take the blame as well as the administration.

18 But I think it's shocking, and I don't particularly care
19 for doing that.

20 Hopefully, Senator Mello, that we are -- we have the
21 numbers right over at the Finance now, and hopefully tomorrow, I
22 understand, it goes before Ways and Means, Senator Greene's bill,
23 who has been an absolute angel to Cal Expo Board, helping us out
24 and trying to work us out of our problem. And certainly we're
25 hopeful that his bill will move forward tomorrow and we can get
26 our bills paid.

1 SENATOR MELLO: I heard further it was a private
2 individual who put up a cash deposit in order to get the power
3 turned on; is that correct?

4 MR. ARNOLD: I don't believe that is right, Senator
5 Mello. I was with the manager at lunch today, and he said it
6 came from the Department.

7 Now, I cannot -- I'm not sure of that. Maybe somebody
8 can verify it better, but I don't believe that's correct.

9 SENATOR MELLO: I'm just repeating what I heard
10 recently, and I think that further aggravates the situation,
11 where you have a public agency unable to meet their bills and
12 responsibilities, and then faced with several million dollars of
13 deficit, unpaid bills, and the power shut off.

14 A remedy ought to be forthwith from the public sector
15 rather than -- I don't have proof other than what I understand
16 did happen.

17 MR. ARNOLD: I had heard that too, Senator. I asked the
18 general manager over there, and he said it wasn't true at lunch
19 today. So, I really don't know.

20 SENATOR MELLO: Is Kirk Breed still acting?

21 MR. ARNOLD: No, Joe Barkett is the acting General
22 Manager. Kirk is managing the Fair, working for the Fair, and
23 also on the racing areas.

24 SENATOR MELLO: So he's still on the payroll then?

25 MR. ARNOLD: Oh, yes, in some area, consultant, I
26 believe.

27

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1 SENATOR MELLO: You're very kind to him. I think that
2 he's completely irresponsible, from my point of view. And I
3 shared that incident that happened a few years ago, when a band
4 from my area came up here. After I'd personally made
5 arrangements with him to have a presentation made by this band,
6 which has won honors around the world, and when they got there,
7 no one had ever heard of them, and they had no place to perform.
8 So, the first one they started yelling at was me, and I've never
9 had a chance to see Mr. Kirk Breed since then, only that when I
10 do, I'm prepared to really be as angry towards him as I possibly
11 can.

12 MR. ARNOLD: I don't disagree with you, Senator. Kirk
13 has a lot of enemies, but he also has an awful lot of friends.
14 And I'm certain, you know, I don't disagree.

15 CHAIRMAN ROBERTI: Sounds like one of us.

16 MR. ARNOLD: That's right.

17 I think Kirk Breed has a place at the California State
18 Fair. I do not think that place is General Manager of the Fair.

19 SENATOR MELLO: If you say he has a place there, earlier
20 I think you alluded to the fact that part of the problems or
21 reasons for going into a deficit was because of administration
22 and poor management.

23 Are you now saying that he's not responsible for the
24 fiscal problems of the Fair?

25 MR. ARNOLD: That's correct, I'm saying he's not
26 responsible any more.

27 SENATOR MELLO: Who is responsible?
28

1 MR. ARNOLD: Joe Barkett is responsible as the General
2 Manager.

3 SENATOR MELLO: No, I'll revise the question.

4 Barkett is now the acting manager. What I'm saying is:
5 Who is liable, then, who shall we direct the responsibility for
6 leading the Fair into this --

7 CHAIRMAN ROBERTI: How did we get in the state we're in
8 now?

9 MR. ARNOLD: Well, I think the Directors have to take
10 some responsibility in this thing. I don't think we can blame it
11 all on one person. They pass -- we meet on a monthly basis, so I
12 think we have some responsibilities as Directors, previous and
13 present.

14 Certainly if I am confirmed today by this Committee, it
15 would be part of my responsibility. I don't blame it all of my
16 executive vice-president that works for my company. I take the
17 blame myself, a lot of it, and my Board does, too.

18 So, I don't disagree with you, Senator Mello. I just
19 don't think that maybe he was watched close enough. I cannot put
20 all the blame on Kirk Breed.

21 SENATOR MELLO: For the time you've been on the Board,
22 which has been what, nine months?

23 MR. ARNOLD: No, no, about three or four months.

24 SENATOR MELLO: Do you feel you've voted for
25 propositions that have directed the Fair further into deficits,
26 or are you voting to trying to dig them out of this?

27

28

1 MR. ARNOLD: I'm only voting to try to get them out of
2 it. I do not believe in deficits. I don't believe in losses.

3 I do believe in a State Fair, and I do believe we've got
4 to get out of this problem currently, and the only way we can get
5 out of it is with state funds. Or, if we're not going to get out
6 of it, then close it down and sell it, get the state a lot of
7 money, which I would hate to see happen.

8 SENATOR MELLO: If this was happening to the little
9 Monterey County Fair, or Santa Cruz, believe me, they'd be down
10 there with their hatchets or something to try to do them in.
11 But, I guess the State Fair is sort of immune to their own
12 activities.

13 MR. ARNOLD: I'd hate to think that's true, sir.

14 SENATOR MELLO: That's all I have, thank you.

15 CHAIRMAN ROBERTI: Thank you, Senator.

16 Are there any other questions?

17 SENATOR DOOLITTLE: I move confirmation.

18 CHAIRMAN ROBERTI: Senator Doolittle moves confirmation.

19 Is there any opposition in the audience? Seeing none,
20 the Secretary will call the roll.

21 SECRETARY WEBB: Senator Doolittle.

22 SENATOR DOOLITTLE: Aye.

23 SECRETARY WEBB: Senator Mello.

24 SENATOR MELLO: Aye.

25 SECRETARY WEBB: Senator Petris. Senator Craven.
26 Senator Roberti.

27 CHAIRMAN ROBERTI: Aye.

28

1 The vote is three to nothing, confirmation is
2 recommended to the Floor.

3 MR. ARNOLD: Thank you, sir.

4 CHAIRMAN ROBERTI: Very good, Mr. Arnold.

5 The next appointment is Mr. Ralph Scurfield, Director of
6 the California Exposition and State Fair.

7 Mr. Scurfield, we'll ask you the same question we ask
8 other appointments and Mr. Arnold: Why do you feel you're
9 qualified to assume this position?

10 MR. SCURFIELD: Well, I've lived in Sacramento about 50
11 years, and I've been associated in various capacities with the
12 Fair in the past as a volunteer in certain things. I've been
13 active in the business community of Sacramento and the political
14 community, and also in some other public service areas. And I've
15 always admired the Fair and would like to be involved in
16 furthering it and getting it back on a pay-as-you-go basis.

17 CHAIRMAN ROBERTI: If you could think of one thing to
18 get it back on a pay-as-you-go basis, what would your program be?
19 What would that one most important thing be?

20 MR. SCURFIELD: I think first of all, and let me define
21 what I would consider a pay-as-you-go basis. I think there's
22 really two categories out there. One is the State Fair, and one
23 is the Exposition.

24 The State Fair requires a lot of facilities, and it
25 requires them during a short period of time. And yet, they are
26 an expense throughout the whole year. There are certain other
27 facilities out there that are money making throughout the year,
28 not only at the time of the Fair, but at other times.

1 So therefore, I think we should come up with a political
2 philosophy of do we want the finest and best agricultural type
3 State Fair in the United States, and if we do, are we willing to
4 subsidize that a little. Not to the extent that we've done it in
5 the past, because I don't believe it's necessary. I believe
6 we're starting to generate income now that has not been generated
7 in the past, and it will continue to be generated. And that we
8 can operate the Fair on a very, very fiscally sound basis once we
9 make the decision as to whether we want that type of State Fair
10 or not.

11 If not, I think we can operate it at no loss, but we
12 won't have the caliber of State Fair that we really should have
13 in this state.

14 CHAIRMAN ROBERTI: What would you do to attract more
15 visitors?

16 MR. SCURFIELD: More visitors? I think the caliber of
17 the Fair and the quality of the horse racing, the quality of the
18 contributions by, I think, involving the counties more so than we
19 have done and attracting them there would -- right now, we're
20 probably drawing mainly, oh, I'd say 80 percent from probably 50
21 miles around Sacramento. I think by involving more of the
22 counties of the state we could get some people from outside of
23 that area.

24 I think also in the past, during times other than the
25 State Fair, we haven't tended to form a partnership with the City
26 of Sacramento. I talked with the head of the Convention Bureau,
27 and he does not have a sheet of paper telling him what facilities
28

1 are available to rent out there. And yet, he's booking
2 conventions into this community all the time.

3 I think we need better relationship there, and I think
4 these can be accomplished.

5 CHAIRMAN ROBERTI: Any other questions of Mr. Scurfield?
6 Senator Mello.

7 SENATOR MELLO: I just want to follow that up, when you
8 say he didn't have the paper, did he know what dates the State
9 Fair was on?

10 MR. SCURFIELD: Yes, he did. I'm thinking more of the
11 balance of the year, when we have large buildings for large
12 gatherings out there that are available for rent. And yet, here
13 a man that is dealing with conventions day after day doesn't know
14 that he can make use of the facilities that we have on a rental
15 basis that would provide income to us.

16 SENATOR MELLO: Plus visitors that come to this State
17 Fair, like they come to the Jazz Festival here and many other
18 events, certainly bring dollars into the town.

19 MR. SCURFIELD: Oh, absolutely.

20 SENATOR MELLO: So, you plan to coordinate more with the
21 local visitors serving organizations to help integrate the Fair
22 into their total concept then?

23 MR. SCURFIELD: Yes, I think we should be in concert
24 rather than competitive.

25 SENATOR MELLO: I'd like to hear your comments about the
26 fiscal condition of the Fair, and what do you feel should be
27 done?
28

1 MR. SCURFIELD: I've only been there about four months;
2 but during that period, the one thing that I've noted above all
3 is that we were getting periodic reports as to the condition of
4 the Fair on a back basis, three months back, rather than this is
5 where we are going.

6 I know in my business, I project my income and my
7 expenses, and then I periodically see am I meeting those
8 projections. If not, do I have to cut expenses, or whatever.

9 All of the information we were getting was three months
10 behind, and then in the fiscal year budget, the coming fiscal
11 year budget, there was included an amount of money for
12 computerization of our accounting system. Well, that should have
13 been done long ago.

14 Every meeting that we go to on a monthly basis, we
15 should have a list of the things that have come about, the list
16 of things that we were expected to believe, are we meeting our
17 projections, are we not meeting our projections; if we're not,
18 what are we going to do.

19 You don't come to the end of the fiscal year and
20 somebody announces that you're a million-two in the hole and say:
21 Okay, how're we going to make up for that. You ran out of time.
22 It's like the insurance man, on December 25th he says: I've got
23 to get busy; this has been a bad year. You can't do that.

24 SENATOR MELLO: I certainly agree with that.

25 Who's the Chairman of your Fair Board now?

26 MR. SCURFIELD: Mr. Richard Stevens.
27
28

1 SENATOR MELLO: I've been reading about him. He seems
2 to bring some good management skills also to the Board.

3 MR. SCURFIELD: He is -- you know, this is a nonpaying
4 job. And we all have other things to do. But I really give him
5 a lot of credit, because he's spent an awful lot of time in this
6 job, and he put together a work program for the coming year that
7 included the Fair, the Exposition and the Board Members. And
8 it's a darn good one, and we're going to be acting on that very
9 shortly.

10 And I think he's quite a flamboyant guy, too. He's
11 quite a talker. And we had two of them for a while; we had Kirk
12 Breed and Richard Stevens. Now we just have Richard Stevens.

13 But I really think that he's going to do some things to
14 get this thing moving. I don't agree with everything he says,
15 because I'm in Sacramento all the time; he's only here
16 occasionally.

17 You may have heard talk about ballparks, and stadiums,
18 and so forth, and we have a little difference of opinion, but
19 that's why we have eight or nine people out there, so we can
20 express those.

21 SENATOR MELLO: Let me ask you another question about
22 this fiscal difficulty.

23 What were your personal feelings when you saw the power
24 turned off out there? Was that aggravating to you?

25 MR. SCURFIELD: Yes, it really was. And the funny part
26 about it was, there was an offer. I don't know who submitted the
27 check, but there was definitely an offer by a fellow that's
28

1 promoting the races, and he had to make sure that the public of
2 this area that was going to be there in attendance knew that the
3 races were going to go on, whether he had to put up a check or
4 whether we had to put up a check.

5 And as I understand it, again, it was a situation where
6 if he put up the check, then how do we get it back into our
7 budget. He'll take a credit against the rent, and those kind of
8 things.

9 That's another problem that we operate under. Most all
10 of our revenue is generated in the same manner that the public
11 sector generates their revenue. And yet, all of our expenditures
12 -- did I say public? I meant private. All of our money is
13 generated by the same methods the private sector generates
14 theirs, goods and services. And yet all of our expenditures have
15 to be handled the same way as the public, in that we have labor
16 unions to negotiate with; we can't hire people for just a portion
17 of the time, and that is quite a hardship, and that affects our
18 budget. But we're working on these things.

19 SENATOR MELLO: I think from what I've heard here
20 between you and Mr. Arnold, and also the new Members of the
21 Board, hopefully this thing will turn around, and the Fair will
22 once again be a show case for the whole State of California, like
23 I think it should.

24 That concludes my questions.

25 MR. SCURFIELD: Well, you know, I can remember as about
26 an eight-year-old boy out on Stockton Boulevard, and the thing
27 that still rings in my ears is the loudspeaker saying: Billy
28 Thomas, will you please meet your parents at the Golden Bear.

1 I think we need some more of that.

2 SENATOR DOOLITTLE: Move confirmation, Mr. Chairman.

3 CHAIRMAN ROBERTI: Senator Doolittle moves confirmation
4 be recommended to the Floor.

5 Is there any opposition in the audience? Seeing none,
6 the Secretary will call the roll.

7 SECRETARY WEBB: Senator Doolittle.

8 SENATOR DOOLITTLE: Aye.

9 SECRETARY WEBB: Senator Mello.

10 SENATOR MELLO: Aye.

11 SECRETARY WEBB: Senator Petris. Senator Craven.

12 SENATOR CRAVEN: Aye.

13 SECRETARY WEBB: Senator Roberti.

14 CHAIRMAN ROBERTI: Aye.

15 The vote is four to nothing, confirmation is recommended
16 to the Floor.

17 Congratulations.

18 MR. SCURFIELD: Thank you.

19 CHAIRMAN ROBERTI: The next appointment is Mr. Frederick
20 Duda, Public Utilities Commission.

21 Senator Rosenthal is joining us for this confirmation
22 hearing.

23 Mr. Duda, will you please tell us why you feel you are
24 qualified to assume this position?

25 Please come up, Ms. Siegel.

26 MR. DUDA: Just passing my 57th birthday, Senator, I
27 would say that age and experience can be a useful teacher is
28

1 doing the work of a Commission at the Public Utilities
2 Commission. One can quickly learn patience also by the amount of
3 work that's there and the sometimes frustration of having to deal
4 with problems which really are very tough problems and require
5 difficult solutions.

6 I believe I have enough patience to stay with the job,
7 stay with the work that would, if I'm confirmed by your body
8 here, would eventually produce what I would like, which would be
9 to help the people of California have the best possible utility
10 system that they can have at the most affordable rates.

11 In my 57 years that I've lived here, 34 of them in
12 California, I've had an opportunity to work in law, 25 years in
13 private law practice, and 5 years in private industry.

14 When I was asked by the Governor to serve, I made a
15 comment that I also had a lot of experience at paying utility
16 bills, and I just came from two days of public witness hearings
17 in San Diego, with the San Diego general rate case, where I heard
18 from people who were having a great deal of difficulty paying
19 their utility bills. And I listened very carefully to what they
20 have to say, because I have a great compassion and feeling for
21 that part of our work, which again is to make sure that we have
22 plenty of utility service available but at affordable rates.

23 CHAIRMAN ROBERTI: Thank you, Mr. Duda.

24 Any questions? Senator Rosenthal.

25 SENATOR ROSENTHAL: Senators, I've been watching Fred
26 Duda here closely in his first month as a Commission, and I have
27 found him to be conscientious in his work and independent in his
28

1 votes. He has learned quickly about several highly complex
2 issues, and he's resisted deciding cases on strictly partisan
3 grounds.

4 I have two questions, and they are concerning how the
5 PUC will evolve during the next few years in conjunction with his
6 being on there.

7 I guess the first one is: What's the role of the PUC
8 President, and what is your obligation to him as an individual
9 Commissioner?

10 MR. DUDA: Senator, as I understand the role of the
11 President, he is to preside over our meetings, of course, which
12 he does. He does attend to the executive needs in liaison with
13 the Executive Director. He does speak for the Commission when
14 matters come to the Commission which are not part of our work
15 agenda.

16 And then, contrasting that to other roles he may have,
17 which I do not yet believe he does have, he does not set the
18 policy of the Commission. He elects to speak his mind on those
19 issues which are before the Commission, the cases. He casts his
20 vote of the five votes on the issues. He does participate in the
21 discourse with the other Commissioners.

22 At this point, I do not see him as having more power,
23 other than what he's endowed with in the way of his ability to
24 persuade the others of a right position.

25 SENATOR ROSENTHAL: The other question is: What
26 obligation does the PUC have to the Legislature, and how can we
27 strengthen that relationship?
28

1 MR. DUDA: The obligation to the Legislature, as I see
2 it, is clearly that the Legislature, speaking for the people, has
3 given us a plan in specific areas by which we do our work. And
4 as those rules and that plan changes -- and this year there are a
5 number of changes which are under consideration -- we are
6 certainly obligated to understand very well what the Legislature
7 has said it believes to be and has ruled to be the will of the
8 people of California. And we are under an obligation to carry
9 out that directive.

10 SENATOR ROSENTHAL: Mr. President and the Members of the
11 Rules, as Chairman of the Energy and Public Utilities Committee,
12 it's my distinct pleasure to recommend the confirmation of Mr.
13 Duda as a member of the PUC.

14 CHAIRMAN ROBERTI: Thank you, Senator.

15 Ms. Siegel.

16 MS. SIEGEL: Thank you Senator Roberti.

17 My name is Sylvia Siegel. I'm Executive Director of
18 T.U.R.N. We regularly represent residential consumers on gas,
19 electricity and telephone cases before the PUC. I have practiced
20 there since 1969.

21 This is my first appearance in regard to any
22 Commissioner in the past, and the reason I'm eager to do so is I
23 see in Mr. Duda -- forgive the expression -- a nonpolitical type
24 technician who can look at the facts, who is caring enough about
25 the people to appreciate their problems, who can evaluate
26 evidence, who can be fair, who is really a square shooter. I
27 think he's an honest person, and X, Y, and Z, I think he's going
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1 to be a good Commissioner. If he's not, he certainly will hear
2 from me.

3 On that basis, I'm willing to come up here from the
4 Utilities Energy Commission, where I had to leave a hot debate on
5 ex parte mans, which I don't believe in, because it's unworkable
6 and unenforceable, to come up there to support Fred Duda.

7 I think he's a great guy, and I can't see anybody not
8 confirming him, and he'll get what-for if he doesn't do the right
9 thing.

10 CHAIRMAN ROBERTI: Thank you, Ms. Siegel. Your advice
11 is going to be probably observed and we appreciate it.

12 MS. SIEGEL: Thank you, Senator.

13 CHAIRMAN ROBERTI: Let me ask you, Mr. Duda, the staff
14 has recommended that the cross of San Onofre be borne by the
15 companies, at least to the extend of \$762 million. Evidently San
16 Diego Gas is going to appeal, or not appeal, is going to
17 challenge the recommendation of the staff.

18 What is your opinion on the staff recommendation? What
19 are your plans as far as the cost of San Onofre?

20 MR. DUDA: Senator Roberti, I will be very careful in my
21 remarks today because the one thing I don't want to do is
22 disqualify myself from casting my vote on the decision finally,
23 because I believe if I indicate at this time what I will do on
24 the case, of course, it could be a prejudicial comment that could
25 take me out of the case.

26 I certainly want to make it clear that in my five months
27 on the Commission, I have not been there as long as the other
28

1 Commissioners, and I will listen carefully to persuasion from the
2 other Commissioners on what we finally do with that case.

3 I know from my independent study that the concept of
4 reasonableness and the concept that the utility may have failed
5 to discharge its obligation and should therefore not be allowed
6 to charge into its rates something that they have done is a long
7 standing policy in utility regulation in the United States. In
8 the some 50 years that I have looked at the procedure, some 34
9 states have elected to use that tool to deny utilities either
10 operating revenue or base rate capital expenditure revenue to
11 recover because the commissions have found that there was not a
12 prudent management decision, and it was not a reasonable thing to
13 accept the charge.

14 What I would intend to do in this case is to read very
15 carefully the record that has developed to show what has happened
16 in San Onofre, and of course, we'll have Diablo Canyon coming
17 after that.

18 As a lawyer, I'm very familiar with the burden of the
19 company to prove its case. The company is coming in asking for
20 this revenue. The company has the burden of going forward with
21 the evidence and proving, and by its quantum and quality of
22 evidence, of proving their case.

23 If the public staff is able to challenge that proof to
24 the extent that the Commissioners can accept that there is a
25 substantial portion of those investments, those developments,
26 that should not be allowed, then I believe that the decision
27 should made accordingly.
28

1 CHAIRMAN ROBERTI: Thank you very much.

2 Senator Mello.

3 SENATOR MELLO: Thank you, Mr. Chairman.

4 I was telling Mr. Duda earlier, I got a phone call from
5 Commissioner Dick Calvo, who sits on the Commission with him, and
6 of course the former Assemblyman. And he too urges your
7 confirmation, and he added that both he and Mr. Duda have one
8 thing in common: They both go to the same hair stylist.

9 MR. DUDA: That's right, we do. We compare notes.

10 SENATOR MELLO: Mr. Duda, I don't want to put you in a
11 conflict again with this question you answered for Senator
12 Roberti, but just to bring forth some concern about Diablo
13 Canyon, which was in my Senate district at one time, and I'm
14 fairly familiar with what happened with that. It was a project
15 that was to start out at around \$600 million, then got up to 5.8
16 billion, not all of which was due to inflation. Much of it was
17 due to the errors committed by the company through their
18 engineering, which has since been corrected to a large extent.

19 I think the question you're going to have to face as a
20 Commissioner is where do you separate out the cost, the true cost
21 for the project that should go on the rate base, and the ones
22 that should not go on the rate base, that are there because of
23 the inability of the company to control the costs and even go and
24 even go and have errors committed in there that became very
25 costly to the project.

26 MR. DUDA: You're probably -- you might agree with me,
27 Senator, that not all of us have engineering backgrounds, and
28

1 most of us have not had any experience at all with plants of this
2 size and complexity of a nuclear generating facility.

3 But there is an answer, and it can be done. This is how
4 it works. The work that was done, although highly technical and
5 specialized because it was building a nuclear generator, is still
6 subject to standards that are well known in the fields of the
7 sciences that are involved, the sciences and the expertise.

8 Everyday and today in the United States and in
9 California, there are law suits proceeding in courts in which the
10 primary issue is a technical one. And in those cases, the
11 experts will be called as the witnesses on behalf of the
12 proponents that everything was done properly; there will be
13 experts called to say, no, based upon our education, our
14 background, experience and knowledge of all the facts in this
15 case, we say that these are the errors that were done.

16 Now, you have your two experts in opposition on the case
17 -- and I'm only using two in an example sense; you're going to
18 have many, many experts who testify in these cases -- and I
19 foresee a long, long record being developed in both cases on what
20 went wrong, as the public staff challenges that it went wrong. I
21 can see the company responding, rebutting, and then the staff
22 coming back.

23 What you have then is a very hard-fought battle over the
24 issue. And then, as a fair and just decider of the facts, you as
25 a Commissioner have to sit there and analyze the record, and be
26 convinced of which side has won the issue.

27

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1 SENATOR MELLO: Well, that's a fine generalized
2 response, and I think you're under some difficulty of not wanting
3 to state more on the case because you may have to rule on it
4 also.

5 But just from what was published in the press, when
6 Bechtel Corporation came in, the bracing on the piping was flip-
7 flop. They put it in completely reverse as to what the plans
8 called for.

9 Now myself, as a rate payer, I don't feel I ought to be
10 paying for those kinds of errors made by a utility.

11 MR. DUDA: If the proof establishes that there were
12 clearly errors -- and the company may admit some. The companies
13 may actually come forward, and I expect they will, if they're
14 wise. I know how lawyers deal on these matters. If they could
15 come forward with a package in saying: We will readily admit
16 that we made errors, and one of them was that they installed the
17 reactor, called it a mirror image misplacement; they installed
18 the reactor backwards. It was exactly opposite of the way it
19 should go in. But because it was designed in a certain way, they
20 could reconnect it without extra expense, if that's what they
21 said.

22 But there's other errors that were made that I believe,
23 based upon what I've preliminarily have heard, that they're going
24 to admit them. Which means, I think at this point, from what
25 I've heard, it isn't a matter of whether or not there will be a
26 disallowance of these units, speaking of Diablo, because that's
27 the one I have been preliminarily advised the company plans to
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1 admit some error, but that may be controverted. That there will,
2 in fact, be a showing that the thing you mentioned, there was
3 pipe hangers that were not properly ordered ahead of time; they
4 were not sequenced; they were not expedited; the job was held up
5 because, I understand, there were 13 nuclear projects at one time
6 going by one contractor, and therefore they didn't allow for
7 enough lead time to get their stuff where it was supposed to be
8 in time.

9 Plus, there are some complicating factors in it. There
10 is the fact that the company has said that NRC changed the
11 standards in the middle, after Three-Mile Island, and then
12 everything had to be redone, and that's one of the issues.

13 SENATOR MELLO: Another question on where we're going
14 with utility rates. Since 1980, California's rates have
15 increased about twice the level of the rest of the nation.

16 Where do you think we're going to be going in the
17 future?

18 MR. DUDA: Right now, fortunately, we're going down on
19 gas rates. We've had a succession of reductions in the price of
20 a therm of natural gas because of the deregulation by the federal
21 act in 1978, even though they thought deregulation might cause
22 gas prices to fly up.

23 We've had a downtrend in gas prices because, simply,
24 market demand and supply. We've had Canadian gas come in. We
25 have now a pipeline; Houston and Trans Western have connected a
26 pipeline across the south all the way to Florida. We can get gas
27 in here cheaper and cheaper right now. We're down to about \$2.54
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1 or so on decatherm in large quantities. This is down from \$6 gas
2 that they were trying to sell out of Oklahoma.

3 Unfortunately, in electric it has not gone the same way.
4 With inflation running at 3.9 or 4 percent, the utility can still
5 come in and make a showing that their cost of operation is going
6 up more or less with inflation. That means the cost of
7 generating, with all the labor and component costs.

8 So, to answer your question, our options, our future,
9 primarily shows that we're still locked in with the national
10 economy problems. We're still locked in with the deficit. We're
11 still locked in with the rising national debt, and we're still
12 locked in with national inflation. I think our state and local
13 inflation rates are about the same as the national, 3.9-4
14 percent.

15 So, everybody is very happy about that, because we all
16 -- many of us remember when we had double digit inflation not too
17 long ago. But if we can ever reduce even the 4 percent inflation
18 to where we're down even lower, we'll have a better chance of
19 finally and truly stabilizing rates, electric as well.

20 SENATOR MELLO: One of the concerns that I have been
21 looking over is the number of applications that each utility
22 files. I don't have it here with me, but PG&E, for example -- I
23 have it up in my office -- they have filed in the course of a
24 year, I think, about 15 to 20 applications. I'm sure you're
25 aware of them all, having to do with the energy, the solar, the
26 cost of -- I forget what that form number is. So you know what
27 that form number is, 1075 or something? It shows the number of
28

1 rate applications of each utility. But it's neither here nor
2 there.

3 I'm speaking on this because I've introduced a bill to
4 try to focus in onto one single application where your Commission
5 will hear in total their application for the year.

6 The reason for that is to give Sylvia Siegel, and
7 myself, and other rate payers who are overwhelmed by all the
8 applications that you read about on a weekly basis, one shot a
9 year. We can afford to go to San Francisco, and come up there
10 and say: Hey, we think the rates are too high; maybe they ought
11 to slow down to the cost of inflation or something.

12 I know your Commission is opposed to my bill, because I
13 think they want to continue to do business as usual.

14 I think we're heading for a revolution in the utility
15 rates. I'm happy to hear about the gas rates going down, but I'm
16 still getting a lot of complaints from my district in the way
17 rates are being applied.

18 We went to lifeline rates, or what's the new rate?

19 MR. DUDA: Baseline.

20 SENATOR MELLO: Yes, baseline rate. They've changed the
21 name, and changed the eligibility, and people become unhappy
22 about that.

23 MR. DUDA: That's a good point.

24 SENATOR MELLO: Gee, I don't see how some people can pay
25 their energy bills. There's been a lot of plants closed down,
26 not only for energy but for a lot of other causes.

27

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1 But right now in California, we're paying two and three
2 times more for energy than they are in our neighboring states
3 around us. And I know the argument for Washington would be that
4 they have more hydro power, but other states as well. Even
5 within the state, we have some districts, Turlock Irrigation
6 District down there being one and others that have rates half or
7 30 percent as much as PG&E charges.

8 MR. DUDA: I was looking for that. Unfortunately, San
9 Diego Gas and Electric has the highest rates in the state for
10 industrial; isn't that so, Senator Craven?

11 When we had a two-day electric seminar, that was
12 discussed and the point was made that to compete for industry
13 even in California, something has to be done about getting the
14 rates reduced in San Diego so they have at least some kind of an
15 equal shot with the rest of the state.

16 Your comment on the yearly rates, and the fact that the
17 rate payers are upset when changes occur fits this way, that
18 right now, we're on a three-year cycle. It happened before I
19 came to the Commission that they adopted the three-year cycle. I
20 think one of the reasons was they had to divert a substantial
21 amount of the personnel time to the special cases of San Onofre
22 and Diablo, and therefore wanted to set the rates for three
23 years, subject to the increases and decreases by revenues.

24 But what we're doing now that still happens within the
25 year is the adjustment downward of gas prices, meaning refunds
26 for the consumers.

27

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1 SENATOR MELLO: I don't think anybody opposes a
2 reduction. My point is, we're just overwhelmed by the continual
3 applications by the large utilities. They're before you; they're
4 filing all of these rate increases. One is for return on
5 investment; one is for a fuel increase; the other one -- I wish
6 I'd have brought the list down, but I didn't know I was going to
7 get into this.

8 It's very cumbersome, I think, for rate payers to try to
9 even monitor those applications that are being brought in.

10 MR. DUDA: If we could do it, I think I would like to
11 see it done at the Commission of consolidating as many of those
12 proceedings into one.

13 SENATOR DOOLITTLE: Mr. Chairman, I have a question.

14 CHAIRMAN ROBERTI: Senator Doolittle.

15 SENATOR DOOLITTLE: A few years go, my attention was
16 drawn to an article by the former editor of the Sacramento Union
17 explaining how the cost of service bases for electricity rates
18 was abandoned, and the tiers, I think it's the three tiers
19 pricing structure was compressed, and that resulted in some of
20 the enormous bills that we were seeing during the time
21 particularly of a couple of years ago.

22 And I agree with Senator Mello, throughout my district
23 the rates have doubled, some cases tripled, I guess, and it's
24 become very burdensome.

25 Has any thought be given to returning the cost of
26 service and restructuring the tiers a little to provide some
27 relief? What's the possibility of doing that?

28

1 MR. DUDA: This is the situation on the lifeline
2 baseline. As you know, the Miller-Warren Act of 1975 mandated
3 that we establish the reduced rates and --

4 SENATOR DOOLITTLE: I'm not talking about -- what is
5 that, a welfare program or for low income people?

6 MR. DUDA: Miller-Warren in '75?

7 SENATOR DOOLITTLE: Yes.

8 MR. DUDA: It was just an across the board allowance of
9 a base amount of energy to get by with, and that was in effect
10 until about '82, when baseline was started. And baseline has
11 been implemented in the last two years.

12 SENATOR DOOLITTLE: Okay, go ahead and I'll listen to
13 your explanation.

14 MR. DUDA: Basically this is what we have. When we have
15 to look at the total revenue that it's going to take to run the
16 utility, it can be divided up by classes, and it usually is in
17 terms of who pays for the gas and the electric and at what rates.

18 When I came to the Commission there, there was a rate
19 design: different prices for industrial, commercial and
20 residential, and also because commercial and industrial are on
21 different times of day use because they have time meters, they
22 pay a different rate for a different time of the day.

23 SENATOR DOOLITTLE: Is that a new innovation, or has
24 that been with us for a while?

25 MR. DUDA: That's been with us for quite a while.

26 One of the things we try to do is to level out the peaks
27 and fill in the valley with use. We try to convert as many
28

1 industrial and commercial users. To give an example, in San
2 Diego we try to convert buildings to chill water and chill water
3 ice flows in the night time and then use that cool storage in the
4 day to run their air conditioners so that they come off peak.

5 Our heaviest uses are peak uses during the day. You
6 probably know what hours they are, 10 through 8 at night, 10 a.m.
7 to 8 p.m. And during that time we have a real problem because
8 when we get to peak, we have to put older plants on. Older
9 plants are the more costly plants, and that ends up with the most
10 costly energy.

11 So finally, using the resource plan, you come up with
12 all the different costs of generating utility energy or buying
13 it. You know, we are buying some from the Northwest. We've been
14 buying from BPA and Independent Powers Producers in Oregon and
15 Washington for the last 25 years, and the federal government is
16 not helping us too much because they put an 800 percent increase
17 on the price in the last four years from Bonneville Power. We
18 were paying three mils for power; they've increased it in the
19 last rate increase to almost 30 mils.

20 SENATOR DOOLITTLE: Let me just interrupt and ask what
21 sort of an impact would that have on the overall rates, because I
22 don't know what percentage of our power comes from the Northwest,
23 for example?

24 MR. DUDA: That would have perhaps a three to five
25 percent effect. We generate most of the power here in
26 California. We're buying more power now as we can, but it's
27 still very much a small part of it.

1 We're also planning to generate more power in California
2 on cogeneration and independent power producing units. And we
3 can convert -- the University of California at Berkeley's going
4 to convert, Stanford. Santa Clara has converted. Anywhere where
5 we have a nature energy source, where steam energy is being used,
6 we can combine that energy to generate electricity, and it will
7 help us a great deal.

8 That's to avoid building new Diablos, or new Songs, or
9 any new fossil fuel burning unit, because that's where all the
10 money goes into the rate bases, and that's what pushes the rates
11 up.

12 SENATOR DOOLITTLE: I'm not sure I'm clear. SMUD
13 operates on a cost of service, so the more you use the less
14 expensive per unit it is, buying in bulk, I guess.

15 Now, does that still exist for the private utility
16 companies that are regulated by the PUC?

17 MR. DUDA: Yes, and I wanted to answer your question
18 directly.

19 In the two-day seminar in which we had both residential
20 people, consultants, and commercial and industry, the same point
21 was made that you made. They wanted to go either to one block
22 pricing. That means only one price for gas and one price for
23 electricity in order to more clearly reflect today the lower
24 marginal cost of buying gas. We're still not at that point in
25 electricity, but we're getting there. In fact, we're going the
26 other way.

27
28

1 As the big plants come on, the new costs coming in with
2 those plants pushes up the marginal cost higher than the average
3 cost, so that electric rates actually are scheduled to go higher.
4 Under the California Energy Commission's report this year you'll
5 see that gas prices are going the other way. So, we have it both
6 ways.

7 SENATOR DOOLITTLE: The conclusion of that is that they
8 are moving back towards cost of service?

9 MR. DUDA: I say it could be done on the factual basis
10 right now with gas, but to do it with electricity might be a
11 problem because the more you use now, as we're brining in the new
12 higher cost units, the more costly it is.

13 SENATOR DOOLITTLE: Thank you.

14 CHAIRMAN ROBERTI: Any further questions?

15 Is there any opposition?

16 SENATOR CRAVEN: I'll move confirmation.

17 CHAIRMAN ROBERTI: Senator Craven moves. Secretary will
18 call the roll.

19 SECRETARY WEBB: Senator Doolittle.

20 SENATOR DOOLITTLE: Aye.

21 SECRETARY WEBB: Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Senator Petris. Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.

27

28

1 The vote is four to nothing, confirmation is
2 recommendation to the Floor.

3 Congratulations.

4 MR. DUDA: Thank you, Senators.

5 (Thereupon this portion of the Senate
6 Rules Committee hearing was terminated
7 at approximately 3:00 P.M.)

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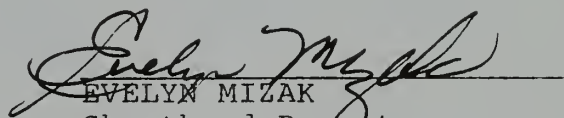
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

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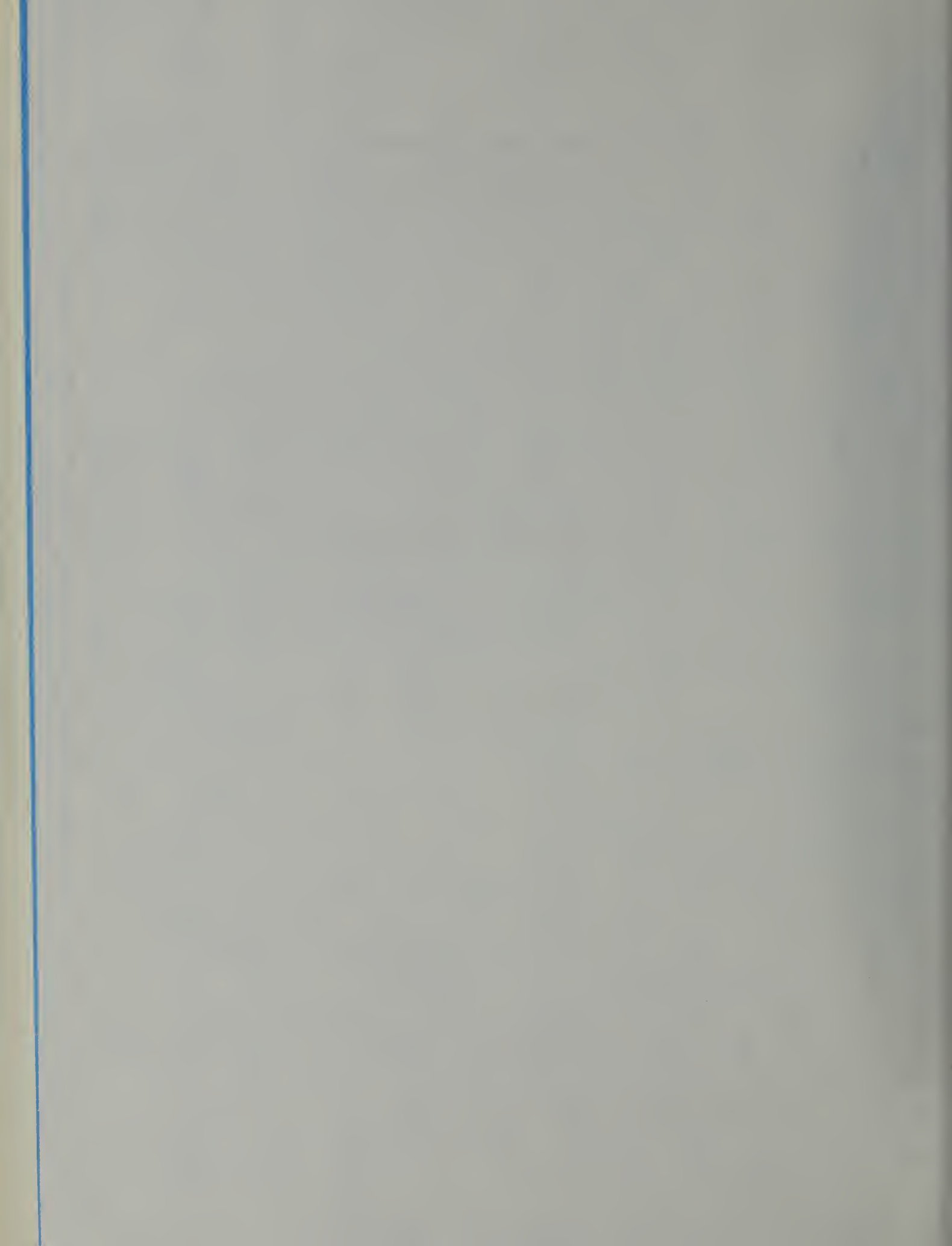
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17 2:25 P.M.

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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

WILLIAM CRAWFORD
Savings and Loan Commissioner

MURIEL MORSE, Member,
Industrial Welfare Commission

JAMES T. RUDE, Member,
Industrial Welfare Commission

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mr. William Crawford, Commissioner of the Savings and Loan.

Mr. Crawford, please come forward. We'll ask you what we ask the other Governor's Appointees: Why do you feel you're qualified to assume this position?

MR. CRAWFORD: Why I'm qualified?

CHAIRMAN ROBERTI: Right.

MR. CRAWFORD: Well, I've been in the industry since 1948. And I've served in the capacity of a savings and loan examiner from '48 to '50, and I left the industry for a short time, was officer manager for an oil company, went back to the Federal Home Loan Bank and continued examining. I went into the industry, served as the chief loan officer for a savings and loan in San Gabriel for three and a half years. After that I started a savings and loan in Long Beach, built it up and sold it out to a larger institution; stayed with them three and a half years. Thought I'd enjoy retirement; I didn't, so I went to work and started another one in south Orange County, Mission Viejo-Laguna Hills area. And I worked at that for a while and sold that out to Coast Federal Savings, stayed with them four years. And I got a call and asked if I would like the job, and I indicated I would, and that's why I'm here.

CHAIRMAN ROBERTI: Very good.

Any questions of Mr. Crawford? Senator Mello.

1 SENATOR MELLO: I just have a couple of minor questions.
2 I had a chance to chat with Mr. Crawford, and I think he comes
3 uniquely qualified for this position based on his experience.

4 A couple of concerns I have are questions about your own
5 philosophy. About 15 years ago, we used to have in many of our
6 cities a gas station on each corner. Those have disappeared with
7 different marketing and the gas crunch.

8 Now we seem to have a savings and loan on every corner.
9 At least it appears that way. I know several of them are in
10 difficulty.

11 What's your perception? Are we going to end up having
12 an overabundance of savings and loans where it risks the
13 investors' savings? Or are we going to have some stabilization
14 do you think?

15 MR. CRAWFORD: Basically, there used to be a provision
16 in the law that defined that the public convenience and
17 advantage, the need had to be demonstrated, and that no undue
18 injury would be done to any existing institution. And over a
19 period of time, the federal and state authorities devised a
20 formula that you should have to describe 25,000 unserved
21 population in order to get a branch or a new charter.

22 Somewhere along the line, and I can't recall when it
23 was, the big ones didn't even appear to protest any more, rather
24 they just went out and filed for them. So, the 25,000 unserved
25 population disappeared, the agreement.

26 So, they have expanded, and then we got this
27 inflationary period that we're not equipped to handle generally.
28

1 And we used to live very well with a prime rate that was stable
2 and a lack of inflation. But when inflation hit, and it became
3 necessary to see that some money was in housing in order to avoid
4 credit crunch, so in 1978 they started deregulating the
5 liabilities side of the balance sheet. In the meantime, there
6 was this continued expansion in order to pay catch up; if you
7 grow, you can continue to get fees and the like. And then that
8 began to be a problem.

9 I mean, we've finally wound up paying more for savings
10 than we were earning on the loan portfolios. Portfolios were
11 long term.

12 So, we wind up having people expanding in order to try
13 to get earnings. And so now we have, I would say, a pretty good
14 saturation.

15 SENATOR MELLO: Would you support legislation that would
16 bring it back to those items that we have since lost in the that
17 would give --

18 MR. CRAWFORD: That wasn't in the law. I mean, there
19 were provisions for need and public convenience and advantage,
20 but the agreement -- and no undue injury -- but I believe the one
21 with the 25,000 was an agreement between the Federal Home Loan
22 Bank and the Department of Savings and Loan.

23 I think there should be some order, and the economic
24 forces today are toward consolidation, more toward consolidation
25 and expansion. Since '79, nationally about 25 percent of the
26 industry has disappeared.

1 SENATOR MELLO: Recently in the Wall Street Journal,
2 there was an article that showed that many of the savings and
3 loans throughout the country are in serious financial trouble,
4 and they also listed about a third of them that list good will in
5 the business and intangible assets in their net worth column;
6 without listing them, they would probably have a negative balance
7 as well.

8 Do you agree that this situation exists in California?

9 MR. CRAWFORD: Well, I think what ever the problem the
10 industry has it has nationally, and we're fortunate in California
11 to have all the savings and loans are insured by the Federal
12 Savings Loan Insurance Corporation. A few years ago, they were
13 concerned about the adequacy of the funds, so the Congress passed
14 a resolution that said they put the full faith and credit of the
15 United States government behind the insurance fund, and so that
16 meant that it was as good as the Government Bonds. So, we're
17 fortunate to have that.

18 However, when you get the full faith and credit, you've
19 got the tax payers are really the ones that are behind that.

20 SENATOR MELLO: If this fund becomes depleted, then the
21 tax payers --

22 MR. CRAWFORD: Pick up the marbles.

23 SENATOR MELLO: -- will have to be picking up for the
24 failures of these financial institutions.

25 MR. CRAWFORD: Well, they have a plan to increase the
26 fund by \$10 billion, and that's what they're proposing to do by
27 special assessments.

28

1 And there also is a proposal that the government might
2 put the full faith and credit of the United States behind a
3 borrowing capacity for the Federal Savings Loan Insurance Fund,
4 but I doubt that that will happen.

5 SENATOR MELLO: My own personal opinion, I just think
6 that we've hit our saturation point already, savings and loan
7 institutions in the state. Depositors have no problem finding
8 one in their neighborhood and neither do borrowers wanting to do
9 business.

10 We're reaching a point where I think the investor
11 savings is facing the types of jeopardy we've seen happen around
12 the country. I think just like in everything else, we've hit the
13 limit already.

14 MR. CRAWFORD: Well, public confidence is a fragile
15 thing, and that's the key throughout the country.

16 SENATOR MELLO: Thank you.

17 CHAIRMAN ROBERTI: Any other questions of Mr. Crawford?
18 Hearing none, do I hear a motion?

19 SENATOR CRAVEN: Move Mr. Crawford's nomination to the
20 Floor.

21 CHAIRMAN ROBERTI: Senator Craven moves that Mr.
22 Crawford's confirmation be recommended to the Floor.

23 Anyone in opposition? Seeing none, the Secretary will
24 call the roll.

25 SECRETARY WEBB: Senator Doolittle.

26 SENATOR DOOLITTLE: Aye.

27 SECRETARY WEBB: Senator Mello.

1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Senator Craven.

5 SENATOR CRAVEN: Aye.

6 SECRETARY WEBB: Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 The vote is five to nothing; confirmation is recommended
9 to the Floor.

10 The next appointee is Muriel Morse, Member of the
11 Industrial Welfare Commission.

12 Ms. Morse, we'll ask you the same question: Why do you
13 feel you're qualified to assume this position?

14 MS. MORSE: Well, I've spent my career in industrial
15 relations and labor relations. I was general manager of
16 personnel for the City of Los Angeles for 12 years, appointed by
17 Sam Yorty and retained by Tom Bradley.

18 I'm teaching labor relations at USC at the present time
19 and also an adjunct professor at the University of San Francisco.

20 I think the mission of the Commission is an important
21 one, and I would like to serve.

22 CHAIRMAN ROBERTI: Very good.

23 Are there any questions of Ms. Morse?

24 At times the state minimum wage is either as high as
25 federal minimum wage or sometimes slightly higher. The minimum
26 wage, I think, has been unchanged in our state since 1981.

27 MS. MORSE: That's correct.

28

1 CHAIRMAN ROBERTI: What are your views on either the
2 comparability of the wage with the federal wage or the
3 possibility of change?

4 MS. MORSE: Well, the Commission has just concluded the
5 review of that subject, and it was a difficult decision for me to
6 make as a public member.

7 The Wage Board made no recommendation to us at this
8 time. We do equate, as you know, with the federal minimum wage.
9 There are four states or agencies above the federal minimum wage.

10 I looked at the evidence as presented by the Wage Board
11 and read the law, I think, in its broader sense, which includes
12 not only a living wage but the health and welfare of all
13 employees, and decided not to vote for a recommended wage
14 increase at this time.

15 CHAIRMAN ROBERTI: Right now we have a great deal of
16 underground economies, especially in the garment industry.
17 Because of it, the minimum wage and other regulations for that
18 matter just are not enforced because it's very difficult to get
19 to this kind of economy.

20 What do you suggest? What should we do? What actions
21 has the Board taken?

22 MS. MORSE: I think closer collaboration with the
23 enforcement division so that those enforcement problems can
24 surface and so that the Commission can be aware of them is
25 essential. And I would hope that we can achieve that in terms of
26 that's an enforcement problem, but I think we have to know what
27 those enforcement problems are.

28

1 CHAIRMAN ROBERTI: Do you have any system whereby you
2 send out investigators, or is that strictly under the --

3 MS. MORSE: Those investigators are all under the Labor
4 Commissioner. We have a very small staff, and it is mostly a
5 research staff. We have done some investigation of problems when
6 petitions have been filed.

7 CHAIRMAN ROBERTI: Is there any opposition to Ms.
8 Morse's appointment?

9 SENATOR CRAVEN: I would move Ms. Morse's confirmation
10 to the Floor.

11 CHAIRMAN ROBERTI: Senator Craven moves Mr. Morse's
12 confirmation to the Industrial Welfare Commission be recommended.

13 Secretary will call the roll.

14 SECRETARY WEBB: Senator Doolittle.

15 SENATOR DOOLITTLE: Aye.

16 SECRETARY WEBB: Senator Mello.

17 SENATOR MELLO: Aye.

18 SECRETARY WEBB: Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Senator Craven.

21 SENATOR CRAVEN: Aye.

22 SECRETARY WEBB: Senator Roberti.

23 CHAIRMAN ROBERTI: Aye.

24 The vote is five to nothing, confirmation is
25 recommended.

26 The next appointment is James T. Rude, Member of the
27 Industrial Welfare Commission.

28

1 Mr. Rude, we'll ask you the same question: Why do you
2 feel you're qualified to assume this position?

3 MR. RUDE: Okay, I'm Director of Personnel, and I have
4 worked in the human resources field for approximately ten years
5 now. And I feel the issues that I deal with on a day-to-day
6 basis having to do with ensuring that employees that work for us
7 have a work environment that's conducive to a quality of work
8 life, and that also works in concert with the organization
9 achieving its goals are that I've been able to work well to keep
10 in balance. I also think that's the role of the Industrial
11 Welfare Commission as well.

12 CHAIRMAN ROBERTI: What are your positions on the
13 minimum wage?

14 MR. RUDE: It's pretty much like Ms. Morse indicated.
15 We reviewed the minimum wage issue very carefully. There was a
16 great deal of information that was generated about the minimum
17 wage. I took at look at it, and I also interpreted the role of
18 the Commission in its broadest sense to review the minimum wage
19 in light of not only those employees that are currently receiving
20 it, but those employees that possibly may be affected by such an
21 increase. And because of that, and because of the fact that
22 there was no strong recommendation from the Wage Board not to
23 raise it at this time.

24 CHAIRMAN ROBERTI: Any other questions of Mr. Rude?
25 Is there any opposition in the audience?

26 SENATOR CRAVEN: Move Mr. Rude's confirmation to the
27 Floor.
28

1 CHAIRMAN ROBERTI: Senator Craven moves Mr. Rude's
2 confirmation be recommended to the Floor.

3 Secretary will call the roll.

4 SECRETARY WEBB: Senator Doolittle.

5 SENATOR DOOLITTLE: Aye.

6 SECRETARY WEBB: Senator Mello.

7 SENATOR MELLO: Aye.

8 SECRETARY WEBB: Senator Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Senator Craven.

11 SENATOR CRAVEN: Aye.

12 SECRETARY WEBB: Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 The vote is five to nothing; confirmation is recommended
15 to the Floor.

16 Congratulations.

17 (Thereupon this portion of the Senate
18 Rules Committee Hearing was terminated
19 at approximately 2:45 P.M.)

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

29th day of May, 1985.


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Shorthand Reporter

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SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY J. MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

BORGNY BAIRD, Member,
Board of Governors of the California Community Colleges

WILLIAM KOLENDER, Member,
Board of Governors of the California Community Colleges

ARTHUR MARGOSIAN, Member,
Board of Governors of the California Communtiy Colleges

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We have one Governor's Appointee who has to catch a plane shortly, so if the Members do not object, we will take him out of order, and then we will return to the legislative file. This is at Senator Craven's request.

Mr. William Kolender, Member of the Board of Governors of the California Community Colleges.

Mr. Kolender, we'll ask you what we ask the other Appointees of the Governor; that is, why you feel you are qualified to assume this position.

MR. KOLENDER: I've been the Chief of Police of San Diego for ten years, and prior to that I'm a graduate of the community colleges of San Diego, our State University. I've been active in establishing the criminal justice program at Miramar College in San Diego, and I've been involved with them in many aspects for many years.

CHAIRMAN ROBERTI: Currently the Board of Governors has requested that there be an augmentation to the Governor's budget regarding the appropriation for the community college system.

MR. KOLENDER: Yes.

CHAIRMAN ROBERTI: So you support that augmentation?

MR. KOLENDER: Yes.

CHAIRMAN ROBERTI: Part of the increment of funds that the administration's budget has proposed for the community college system would depend upon the lottery as a source of funding. In effect, as our fiscal people read it, making

1 community colleges dependent as far as their current base of
2 support upon the lottery.

3 Would you support that? Or, if you do not, would you
4 use your offices, if appointed, to recommend to the Governor a
5 different method of apportionment for the college system?

6 MR. KOLENDER: I was one of those who was in opposition
7 to the establishment of the lottery and publicly stated such.

8 But it has passed, and I think that I would not object
9 to the funding for the colleges coming from the lottery.

10 CHAIRMAN ROBERTI: That's fine, but I mean, as part of
11 the base support for the college system.

12 Right now, the percentage that the community college
13 system is going to be experiencing to bring it up to par, part of
14 that money comes from the lottery.

15 But I take it you support the augmentation, so I would
16 suspect --

17 MR. KOLENDER: Yes, sir, because I don't know what the
18 alternative would be.

19 CHAIRMAN ROBERTI: Very good.

20 SENATOR CRAVEN: There's one thing that occurred to me,
21 Mr. Chairman. We should have read him his rights before he came
22 in here.

23 (Laughter.)

24 CHAIRMAN ROBERTI: He's had the right answers so far.

25 SENATOR CRAVEN: I think he's done admirably well, and
26 I'm sure time will show that he'll do even better.

27 CHAIRMAN ROBERTI: Any other questions? Senator Mello.
28

1 SENATOR MELLO: Thank you, Mr. Chairman.

2 I'm concerned about the declining enrollment in our
3 community colleges, and our lack of really reaching out and
4 serving the minority and ethnic populations in some areas.
5 Generally across the board, we're losing a tremendous amount of
6 students.

7 What do you attribute that decline to?

8 MR. KOLENDER: We are also very concerned about that.
9 We don't know whether the tuition is having that effect. We're
10 not sure that's the cause, but we think that may be a part of it.

11 We are concerned about the mission of the community
12 colleges, what they do and how they do it, what their goals are.
13 And as you know, we are reviewing all of this to determine if we
14 are in fact giving the young people the education that's relevant
15 to them and to what they want to do in life. We all question it.

16 At this point, we're not sure why the enrollment is
17 down.

18 SENATOR MELLO: Do you feel tuition has had any
19 influence in the declining enrollment?

20 MR. KOLENDER: I was a supporter of the tuition, but it
21 would be strictly subjective at this point. There really is no
22 data that's factual that says it is. We believe that it does,
23 but we don't know for sure.

24 SENATOR MELLO: In what direction do you think this
25 plan, you know, the study is going? What do you think will be
26 the results of that study?

27
28

1 MR. KOLENDER: Well, my personal opinion is, we must
2 strengthen the A.A. degree, make it relevant to job occupations
3 within our community. We must strengthen the vocational
4 education. We must do more to have an integration of a transfer
5 program from the two-year institutions to the four-year
6 institutions. We must decide where we are when it comes to
7 remedial education, and how much is going to be the
8 responsibility of the community colleges, and how much of it
9 should be the responsibility of the adult education at the high
10 school.

11 I think once we've answered all those questions, and
12 once we've done those kind of things, you will see some
13 improvement.

14 SENATOR MELLO: What's your feeling about the high
15 percentage of substitute teachers that are hired in our community
16 colleges rather than full-time faculty?

17 MR. KOLENDER: I tend towards full-time faculty. I
18 think there is a place for part-time teachers, having been one,
19 but I think that you cannot use them to the detriment of the
20 professionalism of the full-time teacher.

21 SENATOR MELLO: I agree with what I think I hear is your
22 philosophy. You know, I support the need for part-time teaching,
23 but when the percentages get up to half of the faculty being
24 substitute teachers, then I think you're just going in the
25 direction of having education by substitute teachers.

26 If you went to the Super Bowl with a team that had all
27 substitutes, or half substitutes, rather than the first string
28 out there, I think you'd have some great difficulty.

1 MR. KOLENDER: I would agree.

2 SENATOR MELLO: Thank you.

3 CHAIRMAN ROBERTI: Is there any opposition in the
4 audience?

5 Do I hear a motion?

6 SENATOR CRAVEN: I would move Mr. Kolender's
7 confirmation to the Floor.

8 CHAIRMAN ROBERTI: Senator Craven moves Mr. Kolender's
9 confirmation be recommended to the Floor.

10 Secretary will call the roll.

11 SECRETARY WEBB: Senator Doolittle.

12 SENATOR DOOLITTLE: Aye.

13 SECRETARY WEBB: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY WEBB: Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY WEBB: Senator Craven.

18 SENATOR CRAVEN: Aye.

19 SECRETARY WEBB: Senator Roberti.

20 CHAIRMAN ROBERTI: Aye.

21 The vote is five to nothing. Confirmation is
22 recommended to the Floor.

23 Congratulations.

24 MR. KOLENDER: Thank you, sir. Thank you all very much.

25 (Thereupon the Committee continued with
26 discussion of the legislative file.)
27
28

1 CHAIRMAN ROBERTI: Now, the Governor's Appointees who
2 have been so generously waiting: Ms. Borgny Baird, Member of the
3 Board of Governor's of the California Community Colleges.

4 MS. BAIRD: I am Borgny Baird.

5 CHAIRMAN ROBERTI: Please indicate to us why you feel
6 you're qualified to assume this position, Ms. Baird?

7 MS. BAIRD: Yes, my qualifications, I feel, come from
8 having served for 15 years on the Board of Regents of the
9 California Lutheran College, where for three years, I served as
10 Chairman of the Board while we were seeking a new President and
11 finding one. I have served for a number of years as Chairman of
12 the Academic Affairs Committee, where I certainly became familiar
13 with educational issues. I am currently Chairman of the College
14 Relations and Admissions Committee, and have had that position
15 for about four years. I also serve on the Executive Committee of
16 the college.

17 I have familiarity with the community colleges through
18 Long Beach City College, where I have done some part-time
19 teaching, and where I have over the years served on a number of
20 committees. I've also served on committees for the Long Beach
21 Unified School District.

22 Basically, I am very much interested in creating
23 educational opportunities for young people, partly because of
24 what those same opportunities meant for me in my life. You had
25 problems with my first name; that's because it's Norwegian, and I
26 came from Norway at the age of 15, not being able to speak
27 English. And because of the educational opportunities available
28

1 here in California, I was able not only to learn the language,
2 but get a good education and a profession which I have greatly
3 enjoyed.

4 I think my legal background would certainly also help me
5 to contribute to the Board.

6 CHAIRMAN ROBERTI: Thank you, Ms. Baird.

7 Let me ask you the question I asked Mr. Kolender.
8 Currently the Board of Governors has requested that the
9 Legislature insert an augmentation to the budget. I think it's
10 \$180 million.

11 What is your position on that?

12 MS. BAIRD: Well, I supported it in part, but not all
13 together. Partly because there ^{was} were quite a large request in
14 there for additions to the Chancellor's staff, and at that time
15 we had a management study going of the Chancellor's office, and I
16 did not feel that we should be requesting additional staff, or
17 money for additional staff, until after the management study had
18 been completed. So, I did not completely support the request.

19 CHAIRMAN ROBERTI: Thank you.

20 Are there any other questions of Ms. Baird? Senator
21 Mello.

22 SENATOR MELLO: I just want to repeat some of the
23 questions I asked Mr. Kolender, and that is: To what do you
24 attribute the current decline in the enrollment in our community
25 colleges?

26 MS. BAIRD: Well, I guess I don't know any more than Mr.
27 Kolender does, because most of the reports we have gotten are
28 very conflicting.

1 Part of it, I think, is due to a decrease in the number
2 of high school graduates, so that there are not as many or a big
3 student pool from which students will come.

4 As I said, my familiarity is largely with Long Beach
5 City College, and there we have not had a decline, but the
6 college has done a great deal of recruiting, making it known in
7 the community the availability of college, and the courses
8 offered, and so the result there is that we have not had a
9 decline.

10 I'm not sure whether the \$50 fee has had any actual
11 effect. If it has, then it seems to me that perhaps some
12 additional student aid could help on that.

13 But I think it's one of the things that we're all
14 seeking and searching, is to find the answer to why the decline.
15 And of course, one thing is that some of the very best students
16 are now being recruited heavily by both the University of
17 California and the State system, and so many are going there
18 rather than to community colleges.

19 SENATOR MELLO: To what do you attribute the more rapid
20 decline in the ethnic and minority students?

21 MS. BAIRD: Well, again, I really don't know what the
22 real answer is. I think that there isn't a great deal of
23 encouragement within those ethnic communities themselves for the
24 young people to get an education. And I think that often times
25 if a person of a minority group is seeking to get an education,
26 there is peer pressure which discourages them from pursuing those
27 things.
28

1 But I think there's so many factors that I don't think
2 there's any simple answer.

3 SENATOR MELLO: What do you plan to see come out of the
4 Master Plan study, the assessment?

5 MS. BAIRD: What do I expect to see out of that?

6 SENATOR MELLO: No, what do you hope to see?

7 MS. BAIRD: I hope very much to see coming from it a
8 clearer statement of the purposes of the community colleges in
9 today's society. I think there have been many changes in our
10 society, and therefore undoubtedly many changes in the needs for
11 the community colleges in the programs they present. So, I'm
12 hoping certainly that that will come out of the Master Plan.

13 SENATOR MELLO: What's your feeling about the present
14 high percentage of substitute teachers that are working in our
15 community colleges? In some areas, it's up to 50 percent of the
16 total faculty.

17 MS. BAIRD: I think it's very unfortunate. I don't
18 think that you get the same kind of education with part-time
19 teachers, even though as Bill Kolender said, I also have been a
20 part-time teacher, but in a very limited field. And so, I would
21 hope that that is another thing that will be turned around in the
22 future.

23 SENATOR MELLO: Do you feel the Board should give some
24 direction in solving some of these issues?

25 MS. BAIRD: Yes, I think the Board should indeed.

26 SENATOR MELLO: Thank you.

27 CHAIRMAN ROBERTI: Senator Craven.
28

1 SENATOR CRAVEN: I would move confirmation of Ms. Baird
2 to the Floor.

3 CHAIRMAN ROBERTI: Senator Craven moves Ms. Baird's
4 confirmation be recommended to the Floor.

5 Is there any opposition?

6 Seeing none, the Secretary will call the roll.

7 SECRETARY WEBB: Senator Doolittle.

8 SENATOR DOOLITTLE: Aye.

9 SECRETARY WEBB: Senator Mello.

10 SENATOR MELLO: Aye.

11 SECRETARY WEBB: Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Senator Craven.

14 SENATOR CRAVEN: Aye.

15 SECRETARY WEBB: Senator Roberti.

16 CHAIRMAN ROBERTI: Aye.

17 The vote is five to nothing. Confirmation is
18 recommended to the Floor.

19 Congratulations.

20 MS. BAIRD: Thank you very much.

21 CHAIRMAN ROBERTI: The next appointment is Mr. Arthur
22 Margosian, Member of the Board of Governors of the California
23 Community Colleges.

24 Mr. Margosian, we'll ask you the same question: Why do
25 you feel you're qualified to assume this position?

26 MR. MARGOSIAN: I could answer almost identically with
27 what Bill Kolender said, except one basic difference. I started
28

1 as a student, Mr. Chairman, in a community college. I was an
2 editor of a college paper in a community college, later taught in
3 a community college, and now for the last 25 years have been a
4 teacher at a State University.

5 I firmly feel that I owe something back now to the
6 higher education system, and I have asked to serve on this Board,
7 hoping to give some guidance in an area that's critical in the
8 system that, in my own mind, is not only the largest system in
9 higher education in California, in the nation, but probably, Mr.
10 Chairman, one of the most important.

11 CHAIRMAN ROBERTI: Any questions? Senator Petris.

12 SENATOR PETRIS: I haven't seen your resume, so I have
13 to ask you -- I know it's here somewhere -- have you been a
14 student of a community college?

15 MR. MARGOSIAN: Yes, sir.

16 SENATOR PETRIS: Junior college?

17 MR. MARGOSIAN: Yes.

18 SENATOR PETRIS: What is your feeling on fees?

19 MR. MARGOSIAN: When I was the editor of an ethnic
20 paper, I opposed fees in the community college. I have changed
21 my mind only slightly in the last eight months since I've been on
22 the Board, but I haven't changed my mind thoroughly that I should
23 have not editorialized against the fee.

24 My point is that when I opposed it, I think there was a
25 sense that people thought students were going to community
26 colleges, Senator Petris, and not paying anything. Being a
27 professor at a university, I know what textbooks cost, I know
28

1 what other costs are for a university student, and also having
2 taught in a community college, that these students are paying
3 moneys. So, I thought that the issue of tuition in my opinion
4 was not debated properly.

5 SENATOR PETRIS: What is the modification you've gone
6 through now? Do you think they ought to pay?

7 MR. MARGOSIAN: I think the idea of a slight fee in
8 terms of the other fees the students pay today -- and I mean a
9 slight fee, Senator Petris -- is not going to limit anybody or
10 keep them out of a community college. But, that would go into
11 responding to a question asked earlier, if we got the information
12 out to students that the colleges had money to help those
13 students who couldn't afford even the \$50 fee, so I don't think
14 that amount of money is going to keep a student out of a college,
15 if again, we would provide the moneys for those students who,
16 because of financial reasons, cannot afford to go.

17 SENATOR PETRIS: I think one of our problems on this,
18 which the Governor doesn't seem to have a grasp on, and that is
19 it's just another 50, but the overwhelming majority of community
20 college students work either full-time or part-time. Some of
21 them are married, they have children; their age average is much
22 older than the other schools. A lot of them are coming back to
23 school. And they're struggling. They're working; they have
24 obligations; they have costs.

25 And I've always felt it wasn't fair to say: Well,
26 that's just another 50, as if that's the first expense, and
27 they're not paying out anything to stay alive and go to school.
28

1 It shows a lack of understanding on the part of those who haven't
2 been to a community college or those who haven't looked into it.

3 I would hope that you would not totally change over or
4 bend in your position as a student, as editor of the paper, for
5 another reason. That is, experience has shown throughout the
6 country that just like us, with our taxes, you know, once we
7 impose a tax, it doesn't come off very easily; it keeps growing.

8 The same thing with student fees. Once the fee
9 mechanism is established, it's a convenient source for helping
10 carry part of the budget. And I don't know that our state is
11 that much different, in spite of our tradition, from the
12 neighboring state of Oregon and other states who, once they got
13 that fee in place, it just kept going up and up and up and never
14 went down.

15 I'm not asking you to make a commitment, but I'm trying
16 to urge you to take a very good look at fees.

17 I personally think we ought to eliminate them at all
18 levels. I'm a beneficiary of the G.I. Bill. Uncle Sam made it
19 possible for me to go to law school. The particular school I
20 went to, I couldn't even get into the football stadium before; it
21 was Stanford. And I wouldn't even dream of going to Stanford,
22 okay? It extended opportunities to a lot of people who otherwise
23 wouldn't have had them, and the government got its money back
24 many, many times over, and that's really well spent.

25 So, that's just a plea from one of the members.

26 MR. MARGOSIAN: Just a reaction, Senator. I was a
27 product of the Korean War at the time, and was a thankful product
28

1 of the G.I. Bill, and completed my education with a family,
2 thanks to that. And I think I have paid many, many times in
3 taxes what the government paid me.

4 SENATOR PETRIS: Sure. Thank you.

5 CHAIRMAN ROBERTI: Any other questions of Mr. Margosian?

6 SENATOR CRAVEN: . Move Mr. Margosian.

7 CHAIRMAN ROBERTI: Senator Craven moves Mr. Margosian's
8 appointment recommended for confirmation to the Floor.

9 Secretary will call the roll.

10 SECRETARY WEBB: Senator Doolittle.

11 SENATOR DOOLITTLE: Aye.

12 SECRETARY WEBB: Senator Mello.

13 SENATOR MELLO: Aye.

14 SECRETARY WEBB: Senator Petris.

15 SENATOR PETRIS: Aye.

16 SECRETARY WEBB: Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Senator Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 The vote is five to nothing. Confirmation is
21 recommended to the Floor.

22 (Thereupon this portion of the Senate
23 Rules Committee hearing was terminated
24 at approximately 4:30 P.M.)

25 --oo0oo--
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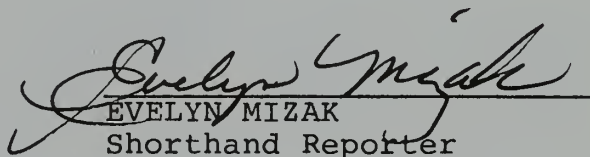
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this
18th day of April, 1985.


EVELYN MIZAK
Shorthand Reporter

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1985
no. 16

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 19, 1985

1:50 P.M.

1 HEARING
2 SENATE RULES COMMITTEE
3 STATE OF CALIFORNIA
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10 STATE CAPITOL
11 ROOM 113
12 SACRAMENTO, CALIFORNIA
13
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16 WEDNESDAY, JUNE 19, 1985

17 1:50 P.M.
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25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR MELLO

MEMBERS ABSENT

SENATOR DAVID ROBERTI, Chairman

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

WILLIAM E. LEONARD, Sr., Member
California Transportation Commission

BRUCE NESTANDE, Member
California Transportation Commission

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Proceedings

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Governor's Appointees:WILLIAM E. LEONARD, Member
California Transportation Commission

1

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Questions by SENATOR MELLO

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Committee Action

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BRUCE NESTANDE, Member
California Transportation Commission

6

Questions by SENATOR MELLO

7

Question by SENATOR DOOLITTLE

11

Motion

12

Committee Action

13

Adjournment

13

Certificate of Reporter

14

P R O C E E D I N G S

--oo0oo--

CHAIRMAN CRAVEN: Item One on the agenda today is the Governor's Appointees who are appearing for confirmation. First is Mr. William E. Leonard, Sr., Member of the California Transportation Commission.

Mr. Leonard, would you come up here and sit down and tell us why you feel that you are qualified for this position.

MR. LEONARD: Thank you, Senator.

My name is William E. Leonard. My business is business. I'm a graduate from Berkeley, business administration. I've been in the private sector since after World War II; owned seven parking lots, operated them.

During the years '50 through the present day, I've served on local communities -- local civic groups that were related to transportation. In 1969, I was appointed to the Aerospace Advisory Committee of the California Highway Commission. In 1973, I was appointed to the California Highway Commission, serving the last year in 1977 as its Chairman. And in that capacity, because of circumstances at the time where I was required to write my own transportation plan augmenting the six-year plan at that time by just short of \$1 billion, which incidentally passed the Commission at that time on a six-to-one vote.

CHAIRMAN CRAVEN: Very well. So, you really served with the precursor to the present Commission?

MR. LEONARD: That's correct, sir.

1 CHAIRMAN CRAVEN: Do the Members have any questions of
2 Mr. Leonard?

3 SENATOR DOOLITTLE: I move confirmation.

4 CHAIRMAN CRAVEN: Does Senator Mello have any questions?

5 SENATOR MELLO: This would be an excellent chance to
6 talk to Commissioners face-to-face, because usually they're
7 sitting on this side, and I'm down there pleading with them to
8 approve my project.

9 CHAIRMAN CRAVEN: Hopefully you will not choose this
10 opportunity to get even.

11 (Laughter.)

12 SENATOR MELLO: I look around, I hoped my other two
13 colleagues would be here, because being only the third vote here
14 puts you in a very advantageous position.

15 I know your son, Bill, Jr., and I'd say you have a very
16 fine son, and I can see that he's cut from good cloth also.

17 MR. LEONARD: Thank you, Senator. He's not a Junior.
18 The "E" in my name is Elder and the "R" for him is Robust.

19 SENATOR MELLO: I see.

20 Mr. Leonard, I sure appreciate your support of
21 especially our transportation needs out in the rural area. You
22 can recall, we were there pleading just a few weeks ago about
23 such roads as the Prunedale bypass and Pacheco Pass, and many
24 others that are very close to me.

25 I'm just going to ask you a few general questions. One
26 is, that most recent STIP report put out by Caltrans showed four
27 alternatives, and really to catch up with our road needs, we're
28

1 going to be looking at quite a sum of money, some \$15 billion is
2 what they projected for highway construction, for maintenance,
3 safety, and to avoid the kind of clogging that we're now seeing.

4 Where do we find this kind of money to meet our needs in
5 the very near future, let alone the long range?

6 MR. LEONARD: Senator, as you know, the state funds
7 total almost a billion dollars a year. Approximately 70% of that
8 has to go for operations, maintenance; another 12-15% should go
9 for federal matching funds; which only leaves a very, very few
10 dollars, around 12-15% for state-only financed projects.

11 The additional resources are very definitely going to be
12 needed because the 70% is continuing to climb. The additional
13 resources, we always say, we can look back to the Department and
14 try to tighten things up there, which we certainly try to do.
15 But, we have to face the fact that as our system gets older,
16 maintenance is going to be taking an ever increasing portion of
17 our resources.

18 Our total resources are going to have to be expanded.
19 I'm hopeful that the Legislature will address that issue this
20 session as far as those funds that are now being diverted from
21 the Transportation fund.

22 We are going to need new resources as time goes on. We
23 have talked in the past in the term of user fees, which limits
24 your resources to the gas tax, so to speak. I believe we're
25 going to have to look at beneficiary fees. I think we're going
26 to have to look at more public-private sort of arrangements where
27 the highway program is augmented through that source. Even
28

1 though we will in due course need an increase in fuel tax, even
2 then, I don't believe that the practical amount that the
3 Legislature will feel that it would be opportune to pass will be
4 sufficient.

5 So, we're going to have to look at all sources.

6 SENATOR MELLO: I can appreciate your saying: We hope
7 the Legislature comes up with something.

8 There's another part of this important item, and that's
9 the administration, the executive branch, which plays a key role
10 in approving any new revenue. So far, the Governor has not shown
11 any support for increasing the gas tax fees, and that's why a
12 bill by Senator Foran, that I thought was a fair bill, would have
13 provided a nickel's increase in gas taxes, two cents for the
14 state and three for local government. But we could not get
15 enough support to move it out of the committee.

16 And you mentioned another key point that I just want to
17 also elaborate on, and that is the increased costs of
18 maintenance. What I see happening is, if we don't maintain our
19 roads now, when the maintenance is due, then as they become more
20 deteriorated, we're going to be looking for major reconstruction
21 when we lose our sub-base and lose the roads that we've had in
22 fairly good shape up until now.

23 I see the problem getting worse and compounding if we
24 don't come up with some major financing of our transportation
25 system.

26 MR. LEONARD: Senator, you've alluded to several points
27 there. One, I feel it's incumbent upon this Commission to
28

1 develop programs, which they have done, and bring them to the
2 attention of the administration of what I think -- what the
3 Commission thinks is the appropriate course of action for the
4 administration to follow. I think that's one of our obligations
5 and responsibilities.

6 I further think that it's one of our obligations and
7 responsibilities to review the federal program as to how it
8 impacts on the state of California, and through our
9 representation, both elected officials, Congressmen and Senators,
10 and through our membership in the national organization, feel we
11 should attempt to make those changes of the disbursement of
12 federal dollars that will assist in the state program. The
13 Commission is following that sort of scenario at this time.

14 Senator Foran has been a friend of transportation for a
15 great many years, back in the days when he was Chairman of the
16 Assembly Transportation Committee. And I think that you'll find
17 the Commission is supportive of the actions that he is undergoing
18 right now in trying to get something before both Houses.

19 SENATOR MELLO: I have no further questions.

20 CHAIRMAN CRAVEN: Thank you very much.

21 Is there anyone in the audience who wishes to testify in
22 favor or in opposition? There appears to be none.

23 We have a motion by --

24 ASSEMBLYMAN LEONARD: For the record, I'll speak in
25 favor of confirmation.

26 CHAIRMAN CRAVEN: Sort of a nepotistic tinge to that, I
27 think. We figured that you would support your daddy.

1 We have a motion by Senator Doolittle.

2 Would you call the roll.

3 SECRETARY WEBB: Senator Doolittle.

4 SENATOR DOOLITTLE: Aye.

5 SECRETARY WEBB: Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris. Senator Craven.

8 CHAIRMAN CRAVEN: Aye.

9 SECRETARY WEBB: Senator Roberti.

10 CHAIRMAN CRAVEN: Very good, recommendation to the
11 Floor. Thank you, Mr. Leonard.

12 Next we have the pleasure of welcoming back a former
13 colleague who is now serving as Supervisor for the County of
14 Orange, Member of the California Transportation Commission, the
15 Honorable Bruce Nestande.

16 SENATOR MELLO: He's Chairman of the Commission.

17 CHAIRMAN CRAVEN: All right, fine. That's even more
18 lofty.

19 MR. NESTANDE: I don't know what that gets you.

20 Bruce Nestande for the record.

21 CHAIRMAN CRAVEN: Very well, Mr. Nestande, would you
22 please tell us why you feel you're qualified for this position?

23 MR. NESTANDE: Well, I would say I'm qualified for
24 several reasons. One, I've served on the Commission for about
25 three years; first appointed by Governor Brown and reappointed by
26 Governor Deukmejian.

27

28

1 I have had legislative experience, serving in the
2 Assembly for six years, and I think also I bring to the
3 Commission a unique perspective that other Commissioners don't
4 have, because they have other strengths, and we all have
5 strengths and weaknesses, but I think having been a Member of the
6 Legislature, number one, and secondly, presently a member of the
7 Orange County Board of Supervisors brings to the Commission a
8 perspective that others simply don't have because of their
9 background and experience.

10 And I think that obviously transportation is integrally
11 tied into land use, and therefore having the perspective of a
12 county official, I think, lends a different perspective to the
13 Commission during discussion that otherwise would not be there.

14 So, I think those are a few of the qualifications.

15 CHAIRMAN CRAVEN: Very well. Senator Mello.

16 SENATOR MELLO: You heard my question to Mr. Leonard,
17 and I'm really concerned about where we're going in California to
18 meet our highway needs and transportation needs, mainly because
19 this year we're \$800 million short of meeting our -- we're going
20 to have to roll over some projects this year, and unless we have
21 new funding, I think we're going to run into catastrophic
22 situations in our transportation system.

23 I'd like to hear your comments about how we meet our
24 needs.

25 MR. NESTANDE: Without question, the seriousness which
26 you present is there. I can perhaps even dramatize it further by
27 saying that even if the five-year STIP that we're presently
28

1 working on were fully funded, and that is around \$800 million
2 short, it would still double the lane mile deficiencies in
3 California.

4 So, the problem is before us, and the problem is beyond,
5 I think, each of us comprehending at this point in time.

6 I think, Senator, like any other problem out there,
7 until the constituencies out there, the people out there
8 understand the magnitude of the problem, they won't get behind
9 it. Like, for example, in Orange County, we had a one-cent a
10 gallon tax increase on the ballot, which many of us down there
11 supported, and it got beat 70-30. The people were not convinced
12 that the transportation problem is that severe.

13 It seems to me that what we must do is legislatively and
14 without question executive branch leadership, but legislatively a
15 lot of changes ought to occur in some of the federal and state
16 laws. Like, for example, the 30% of the miles driven in
17 California are on interstate road, yet 70% of our money goes into
18 interstate projects because of the funding formulas from
19 Washington, D.C. You have all kinds of inequities in the tax law
20 -- I mean in the transportation funding law that I think have to
21 be worked on also to begin to try and bring more money into
22 transportation in California for our noninterstate system.

23 The amount of money that flows into the General Fund
24 from transportation is a factor that ought to be considered. And
25 without question, the day is going to come when we have to
26 address the issue of a gas tax increase. When there's a
27 sufficiency of public support out there, that will begin to
28

1 occur. But right now, the public is not perceptive enough to
2 understand the great need that exists out there. So therefore,
3 whether people are Democrats or Republicans alike, they're very
4 hesitant in voting for a tax increase until the public ought
5 there is convinced that that money is needed.

6 I think you and I are convinced right now it's needed.
7 So therefore, it's going to take leadership to go out there and
8 show what has to be done.

9 SENATOR MELLO: I wouldn't gauge the whole state like we
10 might see what happened in Orange County. When Orange County was
11 voting down its proposal for transportation, Santa Clara County
12 was passing theirs, and I think there's six or seven counties now
13 that have passed an increase in sales tax, that's really not as
14 appropriate or as relative to transportation as gasoline and
15 other transportation taxes might.

16 MR. NESTANDE: I think we wrote a poor measure. And I
17 think that was unfortunate also.

18 SENATOR MELLO: You said the day may come, and I forget
19 the words you used, that we'll need a gas tax.

20 My question to you is, do you think that day is here now
21 or not?

22 MR. NESTANDE: I would say that there is no question.
23 You could pump millions more into the transportation planning and
24 still not meet the needs of what has to be done. I would say
25 without question it would be needed right now, but whether it's
26 politically feasible to do it is a whole different question,
27 whether you can find enough Legislators and public support out
28 there to put it through at this point in time.

1 Right now, we will get by for two more years without a
2 real serious crunch. We will be able to meet, for the most part,
3 what's planned for the next couple of years. The crunch will
4 come in '87-'88 is when we will have to have some kind of revenue
5 enhancement or you'll simply have to severely cut projects.

6 SENATOR MELLO: Some cities are now saying that they
7 cannot overlay their streets but once every 200 years. That's
8 based on some directors.

9 Now, do you agree that if we don't take care of proper
10 maintenance on our state highway system as it is needed that
11 we'll be facing even greater costs later with more serious
12 construction?

13 MR. NESTANDE: There's no question about that, but as
14 was pointed out by the previous Commissioner, that one of the
15 reasons we don't have enough money right now for new capital
16 improvements is because 15 years ago, we spent 70% of our money
17 for new capital and 30% for maintenance; now we're spending 70%
18 for maintenance and 30% for new capital. And so, there's no
19 question that the maintenance problem is now upon us.

20 SENATOR MELLO: And I sure appreciate your support and
21 response, and having worked with you, know how you diligently
22 pursue this. I just hope somehow we can get the message to the
23 people. They're the ones who are going to have to be informed,
24 as well as the administration, and even some of my colleagues in
25 both the Senate and the Assembly, that this is really a high
26 priority to take care of our transportation needs, and the longer
27 we delay, the more costly it's going to be.

1 MR. NESTANDE: You can even add to that, the more we
2 delay, the more we're going to hurt the business climate in
3 California, because if you can't move people and move commerce,
4 you're going to hurt the entire business community in California.

5 But I think also that at least the question that Senator
6 Craven first of all asked about qualifications, hopefully,
7 somehow or other, there's going to be a way also to get more
8 people knowledgeable about this issue, because I have learned so
9 much myself on the issue of transportation, having been on the
10 Commission now for three years, that I didn't know as a Member of
11 the Assembly, quite frankly.

12 SENATOR MELLO: Thank you very much.

13 CHAIRMAN CRAVEN: Very good.

14 Senator Doolittle.

15 SENATOR DOOLITTLE: Mr. Nestande, how much
16 transportation fund money does go into the General Fund? I know
17 that a certain amount does, but I don't think I've ever heard it.

18 MR. NESTANDE: The numbers I have heard and have seen
19 reported to me is that over the past ten years, approximately a
20 billion dollars that comes from what you might say wheels, comes
21 from vehicles of some type, flow into the General Fund.

22 SENATOR DOOLITTLE: Is that over ten years or per year?

23 MR. NESTANDE: Over ten years.

24 SENATOR DOOLITTLE: Thank you.

25 MR. NESTANDE: Could I add one more point, Mr. Craven?

26 CHAIRMAN CRAVEN: Certainly.

27
28

1 MR. NESTANDE: That is that at the time that Mr. Mello's
2 other comment, and that is, I think also that, and it's a reason
3 that -- the first question asked about being a county official
4 also, there has to be more help from the private sector, there's
5 no question. We can't raise taxes enough to fund all these
6 projects. Like for example in Orange County right now, we have
7 what's called a private sector participation fees. Every time
8 they build a house or a commercial building or a retail building,
9 a fee is extracted that goes into the count fund to build more
10 roads and new roads.

11 That's got to be part of the component, part of the
12 financing package also. It would take a 15-cents a gallon tax
13 increase to go ahead and keep the status quo in California for
14 the next 10 years. There was never that kind of tax increase.

15 SENATOR DOOLITTLE: Move confirmation, Mr. Chairman.

16 CHAIRMAN CRAVEN: Senator Doolittle moves.

17 Is there anyone in the audience wishing to testify in
18 favor or in opposition? There appears to be none.

19 Call the roll.

20 SECRETARY WEBB: Senator Doolittle.

21 SENATOR DOOLITTLE: Aye.

22 SECRETARY WEBB: Senator Mello.

23 SENATOR MELLO: Aye.

24 SECRETARY WEBB: Senator Petris. Senator Craven.

25 CHAIRMAN CRAVEN: Aye.

26 SECRETARY WEBB: Senator Roberti.

27

28

1 CHAIRMAN CRAVEN: Very good, recommended to the Floor.

2 Thank you very much, Bruce.

3 (Thereupon this portion of the Senate
4 Rules Committee hearing was terminated
5 at approximately 2:10 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:


That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

19th

day of June, 1985.


EVELYN MIZAK
Shorthand Reporter

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 3, 1985

1:50 P.M.

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17 1:50 P.M.
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26 Evelyn Mizak
27 Shorthand Reporter
28

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

DAVID PADILLA, Member
Industrial Welfare Commission

CLARENCE W. ROSE, Member
State Board of Forestry

THEODORE J. WADDELL, Member
State Board of Forestry

JYRL JAMES-MASSENGALE, Chair and Member
Agricultural Labor Relations Board

DIANNA LYONS, Esq.,
Attorney for United Farm Workers

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26

JYRL JAMES-MASSENGALE, Member and Chair,
Agricultural Labor Relations Board

26

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We normally take up Governor's Appointments in the alphabetical order in which they're going to appear today. We will digress a little bit, and we'll take up James-Massengale after the others, after Padilla, Rose and Waddell.

David Padilla, Member of the Industrial Welfare Commission. Mr. Padilla, if you want to step forward.

MR. PADILLA: My name is David C. Padilla.

CHAIRMAN ROBERTI: We'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MR. PADILLA: Well, Mr. Chairman, labor has been all my life. I represent the labor people; that is my job, not only in the organized, but the unorganized throughout the state.

The IWC Board is really the only agency that can help them. And I feel that my experience in labor, I feel I understand the needs of working people in California. I feel I'm qualified to serve.

CHAIRMAN ROBERTI: Thank you very much.

Are there any questions of Mr. Padilla?

Mr. Padilla, it sounds like you're going to get off easy.

Do I hear a motion?

SENATOR MELLO: I'll so move confirmation.

CHAIRMAN ROBERTI: Senator Mello moves confirmation.

1 Any opposition in the audience? I see support in the
2 audience, Mr. O'Hara.

3 Secretary will call the roll.

4 SECRETARY WEBB: Senator Doolittle. Senator Mello.

5 SENATOR MELLO: Aye.

6 SECRETARY WEBB: Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Senator Craven. Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is three to nothing. Mr. Padilla's
11 confirmation is recommended to the Floor.

12 Thank you very much.

13 MR. PADILLA: Thank you, Mr. Chairman.

14 CHAIRMAN ROBERTI: The next is Mr. Clarence W. Rose,
15 Member of the State Board of Forestry.

16 MR. ROSE: I'm Clarence W. Rose.

17 CHAIRMAN ROBERTI: Fine, Mr. Rose. We'll ask you the
18 same question, and that is why you feel you're qualified to
19 assume this position.

20 MR. ROSE: Sir, I'm a logging contractor, a licensed
21 timber operator, a registered professional forester, and a
22 timberland owner in northern California.

23 California's forests are facing the increasing pressures
24 from population growth, from urbanization, and also there is
25 strong concern by the people of California for environmental
26 protection.

27
28

1 I believe my professional credentials and my work
2 experience would serve me well in helping solve some of these
3 problems in this state.

4 CHAIRMAN ROBERTI: Very good, thank you.

5 Are there any questions of Mr. Rose? Senator Mello.

6 SENATOR MELLO: Mr. Rose, I have a few questions
7 regarding first of all, I believe at one of your earlier meetings
8 down at Santa Cruz and the --

9 MR. ROSE: Yes, sir.

10 SENATOR MELLO: Santa Cruz County is the smallest county
11 in the state outside of San Francisco, but it is a very small
12 county compared to other counties, but it does have logging and
13 timbering.

14 The Board of Supervisors, the year earlier, based on the
15 current law, they had provided many recommendations to the
16 Forestry Board. About 19 were adopted out of some 35 or 40.

17 This last year, they had presented at least 32 extra
18 regulations for the Board's consideration. After a hearing, they
19 failed to gain any support for any of their requests.

20 I was just wondering what your response is to that,
21 because it seems somewhat unusual that they would not be given
22 consideration for items that had to do with the number of logging
23 trucks, and facilitation, and adverse affects through the county
24 from logging.

25 MR. ROSE: Sir, I did attend that meeting. It lasted
26 about four hours. Presentations were made by Santa Cruz County
27 planning staff by two Supervisors and by two members of the
28 public.

1 It was the consensus of the Board that the presentations
2 did not demonstrate need for additional rules, especially in the
3 context that we have a very strong Forest Practice Act in this
4 state that applies statewide. Santa Cruz County did, as you
5 referred to, have a whole new package of rules adopted the
6 previous year, and there was no substantiation that the state and
7 the existing county rules were not adequately addressing the
8 problems that can be caused by timber harvesting activities.

9 SENATOR MELLO: I understand their requests included the
10 number of logging trucks that would be allowed during the course
11 of a day during the harvesting season, identifying chemicals to
12 be used in the timber harvesting, and expanding the membership of
13 the review teams.

14 You're saying that all of these were not substantiated?

15 MR. ROSE: That was my impression and also the
16 impression of six other members of that nine-member Board.

17 SENATOR MELLO: What do you feel generally is your
18 philosophy about allowing local government to have a better say
19 in the operations of logging within their counties, where there
20 is sensitive concerns about the environment, and damage to
21 habitat, and preparing rights of way of roads and so forth?

22 MR. ROSE: Well, above and beyond what my own personal
23 opinion is, it's state law that the Board of Forestry has to
24 address those concerns, and I subscribe to that process that came
25 to us through SB 856. We have to address those concerns, but
26 it's incumbent upon the counties also in the law to make their
27 proposals in a way that demonstrates the need for those changes
28 to be made.

1 There is responsibility by the Board to the people of
2 the State of California and also to the people who own the
3 timberland in that county to address their concerns and to
4 maintain a situation where it's possible for them to continue to
5 own their timberland and operate it.

6 SENATOR MELLO: No further questions.

7 CHAIRMAN ROBERTI: Thank you, Senator.

8 Any further questions?

9 Is there any opposition to Mr. Rose's appointment?

10 Hearing none, the Secretary will call the roll.

11 SENATOR MELLO: I'll move confirmation.

12 CHAIRMAN ROBERTI: Senator Mello moves confirmation.
13 Secretary will call the roll.

14 SECRETARY WEBB: Senator Doolittle. Senator Mello.

15 SENATOR MELLO: Aye.

16 SECRETARY WEBB: Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Senator Craven. Senator Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 The vote is three to nothing. Confirmation is
21 recommended to the Floor.

22 Congratulations.

23 MR. ROSE: Thank you, gentlemen.

24 CHAIRMAN ROBERTI: Mr. Theodore J. Waddell, Member of
25 the State Board of Forestry.

26 Mr. Waddell, we'll ask you the same question we ask
27 other Governor's Appointees, and that is why you feel you're
28 qualified to assume this position?

1 MR. WADDELL: Mr. Chairman, Senators, my name is Ted
2 Waddell.

3 I share the concern of a good many other Californians
4 that open space and the status of precious commodities, and I
5 think that the pursuit of the objectives set forth in the Forest
6 Practice Act promulgated by the rules was probably one of the
7 best ways to help resist pressures upon that resource.

8 I think that my professional career of some 32 years,
9 all but two of them being with the California Department of
10 Forestry, my experience in the university setting of being a
11 part-time instructor, and still am, equips me to serve the
12 citizens of this state the best way that I know how.

13 CHAIRMAN ROBERTI: Thank you, Mr. Waddell.

14 Are there any questions of Mr. Waddell. Senator Mello.

15 SENATOR MELLO: Mr. Waddell, we have a series of papers
16 here from your personnel file that you have signed waiver of, and
17 I guess you have given us permission --

18 MR. WADDELL: Yes.

19 SENATOR MELLO: -- to look at these files.

20 In going through them, I find that there have been
21 several incidents of disciplinary action against you over the
22 years. There's one notice of disciplinary action on July 1,
23 1981, from the Department, and it says:

24 "This action is being taken against you
25 for causes specified in the following sub-
26 sections of Government Code Section 19572."
27
28

1 Then it lists "inefficiency". And it goes on to describe -- I
2 guess this came about from your handling of the matter at the
3 Diablo Canyon plant in San Luis Obispo County, to which you were
4 in the position of the Chief Ranger at that time?

5 MR. WADDELL: I was.

6 SENATOR MELLO: And further, going back to some of the
7 news accounts that preceded that letter, they quoted you as
8 taking a position -- well, I guess you were to develop a fire
9 protection plan with PG&E for that plant. Is that correct?

10 MR. WADDELL: Yes.

11 SENATOR MELLO: Quoting from one of the papers, this
12 article was in the Sacramento Bee on October 8th, 1981, quoting
13 you it says:

14 "We don't expect there ever to be much of
15 a fire there because there just isn't much
16 that could burn -- it's almost all concrete
17 and steel," said State Forest Ranger Theodore
18 J. Waddell, who would be in charge of any rein-
19 forcements."

20 Is that a --

21 CHAIRMAN ROBERTI: Where was this, Senator?

22 SENATOR MELLO: Pardon?

23 CHAIRMAN ROBERTI: Where was this? The fire where?

24 SENATOR MELLO: Well, there was not a fire in the case
25 of this information. He was the Ranger in charge to develop a
26 plan with the PG&E for the handling of the Diablo Canyon Nuclear
27 Plant.
28

1 That was, I understand in trying to track this, that was
2 the result of this disciplinary action that came after that time
3 because of his superiors feeling that he inadequately carried out
4 their enforcement plans.

5 My concern here, of course, if you look at a nuclear
6 plant such as Diablo Canyon as concrete and steel, I think you
7 fail to realize what happened at Three Mile Island and what
8 happened at many other nuclear plants.

9 Do you honestly feel that there was not a need for the
10 kind of plan that your Department was trying to urge you to carry
11 out?

12 MR. WADDELL: We had a plan set in place in October,
13 '81. The best of my professional judgment, we were handling the
14 matter properly, timely, and appropriately.

15 The first dispute with the former Director involved the
16 matter of when radiation protection training should take place.
17 It was my professional judgment it should take place when there
18 is a radiation hazard, and at that particular time, I did not
19 know when or if that plant would ever be really radioactive. The
20 triggering mechanism for radiological protection training was the
21 issuance of a low power license by the Nuclear Regulatory
22 Commission.

23 This did not please the former Director, and it was his
24 wish to make an issue of fire protection and my handling of it at
25 that nuclear plant. I resisted that, and it ultimately led to a
26 dispute. There were charges. I was supported by the employees'
27 union. The charges, as a settlement of this dispute, the charges
28

1 were withdrawn. I retired probably two to four months earlier
2 than I had planned.

3 There are no winners in a dispute of this type. I
4 didn't win, nor did I think in my judgment the former Director
5 won. He didn't win, either. Fire protection at that plant did
6 not become an issue.

7 And to respond directly to your question, Senator Mello,
8 I take very seriously my charge to the public. A fire plan was
9 in place. We were addressing it appropriately. It was my
10 professional judgment that we had acted properly and
11 appropriately.

12 SENATOR MELLO: Was it also a fact that the San Luis
13 Obispo Fire Department agreed not to respond -- and I'm reading
14 again here from the San Francisco paper. I think all Members of
15 the Rules Committee have copies of this information; it has been
16 distributed by our staff.

17 It says:

18 "The San Luis Obispo Fire Department will
19 not respond to a fire at Diablo Canyon
20 nuclear power plant unless Pacific Gas and
21 Electric Co. buys equipment to protect fire-
22 fighters from the dangers there, Fire Chief
23 Richard L. Minor said Thursday.

24 "Minor had requested that PG&E purchase
25 about \$25,000 worth of equipment, including
26 four long-term breathing apparatuses which he
27 said firefighters need to safely battle a
28 blaze inside a large structure.

1 "The request was denied by Ted Waddell,
2 the California Department of Forestry ranger
3 in charge of fire fighting in the County.

4 "Waddell said Thursday he recommended
5 earlier this month that PG&E not buy the devices
6 because they are not necessary."

7 It goes on and on.

8 MR. WADDELL: Well, to respond to that question, I
9 denied Chief Minor's request because he was attempting to buy the
10 wrong kind of breathing apparatus that would be suitable in a
11 radiological atmosphere, and we dealt with the Nuclear Regulatory
12 Agency and their scientific laboratories, and they had
13 recommended a specific type of apparatus subsequent to Chief
14 Minor's request, that we ultimately purchased.

15 SENATOR MELLO: Also, we have a letter here on the
16 Department of Forestry stationery, signed by yourself, dated
17 February 13th, 1979, to Pacific Gas and Electric Company, and you
18 list a certain understanding in this letter that supersedes the
19 letter of February 1st, 1978, where you are agreeing to provide
20 fire suppression support, so forth.

21 Is this the letter that the Department took disciplinary
22 action against you for?

23 MR. WADDELL: For some reason, the former Director
24 objected to that letter of understanding that's a standard
25 procedure in any industrial plant. The California Department of
26 Forestry was involved in fire protection at Diablo Canyon Nuclear
27 Power Plant by virtue of a contract that existed by and between
28

1 the county and the state, and it put us into a fire protection
2 role vis-a- vis Diablo Canyon Nuclear Power Plant.

3 The letter that you had in your hand directed to PG&E
4 outlined a sequence of events that would take place and what we
5 would do about it. That letter and modified forms of it were in
6 existence before I arrived by my predecessor, and we updated it
7 occasionally.

8 Diablo Canyon had been going on a long time before I got
9 there.

10 SENATOR MELLO: Well the question here, though, I'm
11 trying to ascertain, number one, it appears that you haven't
12 followed the rules set down by your superiors, and secondly,
13 taking independent action to judge the safety of the nuclear
14 power plant, referring to it as concrete and steel.

15 MR. WADDELL: Well, I beg to disagree with that. I've
16 never been insubordinate; I've followed the rules and regulations
17 of the state and of my superiors the best I can all through my
18 career.

19 And I believe that I acted properly and prudently. I
20 didn't want to expend state resources training people in
21 radiological protection and then have it either not necessary or
22 their training stale by the time that the plant was turned on.

23 I'm fully aware of the dangers of radiological dangers.
24 I'm a former radiological defense officer for the CDF.

25 SENATOR MELLO: Another document here, July 2nd, 1979
26 (sic), from the State Personnel Board, where they addressed to
27 you "Notice of Punitive Action to Theodore J. Waddell":
28

1 "You are hereby notified that punitive
2 action is being taken against you for the
3 following causes of discipline pursuant to
4 Section 19572 of the Government Code for:

- 5 a. Inefficiency.
6 b. Inexcusable neglect of duty.
7 c. Failure of good behavior during
8 duty hours which was inimical to
9 the public service.

10 "These causes for discipline are based
11 on the following ..."

12 Of course, this is not from the Department; this is from the
13 State Personnel Board.

14 MR. WADDELL: What year was this?

15 SENATOR MELLO: This is a copy.

16 Would you mind showing him the document?

17 SENATOR CRAVEN: July 2nd, 1970.

18 MR. WADDELL: Yes, this is the blemish on my career. I
19 don't admit the Diablo dispute as being a blemish. I gave it my
20 best shot. I think it was proper and still do.

21 This is a blemish on my career. I permitted in 1970
22 four subordinates to dispose of six trees that were cut down for
23 construction purposes. They used the proceeds. I don't know if
24 I ever really knew what proceeds came from the sale of those six
25 pine trees, but they used the proceeds to buy materials to build
26 a hose washer and a chain saw.

1 I was disciplined for that. I received a five percent
2 reduction in pay for three months. The employees did also.

3 I regret the error in judgment. I think that the damage
4 to my career was limited, however. Within six months I was
5 promoted. I have regretted that ever since it occurred, and wish
6 I could undo it, but one can't do that. And I recognize that as
7 a blemish.

8 SENATOR MELLO: Mr. Waddell, it seems like the problems
9 went on beyond 1970. Here's the Department of Forestry "Notice
10 of Disciplinary Action". This was dated December 10th, 1981.

11 MR. WADDELL: This was a part of the Diablo dispute.
12 This was the final charge levied by the former Director and was
13 -- those charges were all withdrawn as the result of a settlement
14 between me and the former Director.

15 SENATOR MELLO: Let me go through this, if I may. It
16 said:

17 "This action is being taken against you
18 for the causes specified in the following
19 subsections of Government Code Section 19572:

20 (b) Incompetency

21 (c) Inefficiency

22 (d) Inexcusable neglect of duty

23 (m) Discourteous treatment of
24 public or other employees

25 (t) Other failure of good behavior
26 either during or outside of
27 duty hours which is of such a
28

1 nature that it causes discredit
2 to his agency or his employment."

3 It says:

4 "The above causes are based on the following
5 acts or omissions ..."

6 and goes on for several pages.

7 MR. WADDELL: Those charges -- I left a copy of those
8 charges in your field office for the reason I felt that you, as
9 our Senator in San Luis Obispo County, had a right to know that,
10 as I also left a copy of those charges with former Assemblyman
11 Carol Hallett and our local district attorney.

12 I felt that the charges were so preposterous, and that
13 it would appear so on the face of it, that I had nothing to worry
14 about. And ultimately they were all withdrawn.

15 SENATOR MELLO: Mr. Waddell, if they were preposterous,
16 then why did you, on December 24th, 1981, agree to a joint
17 agreement with the Director as follows, joint statement agreed
18 upon by Mr. Ted Waddell and the Director:

19 "If the press or public questions you
20 on this matter, read the following
21 statement:

22 "On December 24, 1981, Director of
23 the Department of Forestry and Jennifer
24 Willis, Personnel Officer, both representing
25 CDF, met with Ranger IV Ted Waddell and his
26 attorney, Ronald Yank.

1 "At that time, Ranger Waddell and
2 his attorney presented the Director with
3 certain information not previously available
4 to his office. The parties exchanged other
5 information and viewpoints.

6 "As a result of the talks, it was
7 agreed as follows:

- 8 (1) The disciplinary action served
9 on Mr. Waddell on December 11th
10 is withdrawn.
- 11 (2) Mr. Waddell will retire at the
12 end of the March, 1982 pay period,
13 fulfilling a prior personal decision.
- 14 (3) Effective date December 24, 1981,
15 Ranger IV Waddell will be assigned as
16 CDF liaison to administer a new contract
17 between CDF and California State
18 Polytechnic University at San Luis
19 Obispo to conduct research in
20 development of CDF's biomass and
21 wood energy program until
22 March 31, 1982.
- 23 (4) Ranger II Warren Ristow is ap-
24 pointed acting Ranger-In-Charge ...
- 25 (5) This statement is a joint
26 statement of Director Pesonen
27 and Ranger Waddell, who now
28

1 consider all matters raised by
2 the aforementioned disciplinary
3 action closed.

4 (6) This will be the only statement
5 issued by CDF"

6 It appears that this joint agreement was worked out, but
7 does this represent a forced retirement on your part?

8 MR. WADDELL: I left two to four months earlier than I
9 had planned to. This took the heart out of it for me, and I felt
10 that with the support of the employee union, who provided counsel
11 for me in this matter, I felt that this was an equitable
12 settlement, and that I had lost my stomach for further fights in
13 the matter, and I didn't want to jeopardize my health for a
14 matter of two to four months.

15 Yes, I would suppose that's correct.

16 SENATOR MELLO: A few minutes ago you said the charges
17 were preposterous.

18 MR. WADDELL: I did.

19 SENATOR MELLO: I would just think anyone that felt that
20 way about the charges being brought against you that you would
21 not accept a forced retirement.

22 Was there a reduction in pay also involved in your
23 temporary assignment?

24 MR. WADDELL: No.

25 SENATOR MELLO: So, even though you feel that the
26 charges were preposterous, you still agreed to a forced
27 retirement in order not to --
28

1 MR. WADDELL: Two months early, yes.

2 SENATOR MELLO: Was there anything outside of this
3 statement that you feel is relevant?

4 MR. WADDELL: No, sir.

5 I feel that I can listen as a Member of the Board of
6 Forestry. I've demonstrated that in my last assignment in San
7 Luis Obispo. I listened to the people, the citizens of San Luis
8 Obispo County, and we built a volunteer fire department in that
9 county. I can listen and identify areas of agreement, and using
10 that as a basis, construct -- this particular case, construct a
11 fine rural fire department of some 150 people, 10 volunteer
12 companies, partly on the basis of being able to listen. And I
13 think that's important as a public member of the State Board of
14 Forestry. I can listen.

15 SENATOR MELLO: Well, listening is one thing, but I was
16 really interested in pursuing your statement about a nuclear
17 plant, Diablo Canyon, being concrete and steel. If that's your
18 perspective of a big plant down there, which has raised a lot of
19 concerns about safety, I would just wonder what you look at as a
20 redwood tree or some other tree that might be cut down that
21 generally people have, you know, feelings for. Logging
22 represents jobs for some, ways to build homes. But also, if it's
23 improperly done, it could destroy the environment and bring about
24 a tremendous amount of damage to our lands and to the people.

25 I just wonder, who do you listen to and then turn around
26 and make statements like you did on Diablo Canyon?

27

28

1 MR. WADDELL: Well, there is precious little fire
2 protection problems at the Diablo Canyon plant. Really the
3 biggest fire protection problem at the plant is the
4 administrative office.

5 About the only thing that can burn in the turbine
6 buildings is the lubricating oil for the turbines, and the rest
7 is concrete and steel.

8 We're very, very much concerned about radiological
9 protection for our firefighters. We provided an excellent
10 training program for them and trained them, I thought
11 prematurely, but I did in response to the Director's order, and
12 we trained them quickly, and PG&E provided and the people trained
13 in accordance with the letter of understanding that we had --
14 that I had directed to PG&E.

15 SENATOR MELLO: Knowing what we saw at Three Mile
16 Island, I guess it was not a building ablaze with flames, but
17 probably a million times worse when they had that radioactive
18 leak and see what that has done.

19 Mr. Chairman, that concludes my questions.

20 I question highly the fact that Mr. Waddell has served
21 in state government, but has a series of disciplinary actions
22 taken against him, and proven out by the -- usually they go to
23 the State Personnel Board a series of incidents, very serious in
24 my opinion. I just have some great reservations about how he
25 would carry out the Forestry Law of our state if he were to be
26 confirmed.

27 CHAIRMAN ROBERTI: Senator Craven.
28

1 SENATOR CRAVEN: I'm sorry, Mr. Waddell, that I didn't
2 get in at the beginning of your appearance here.

3 I listened to Senator Mello, and Senator Mello is
4 recounting all of those low points in your career.

5 I don't know if anyone has stressed the fact that you
6 are basically a forestry major from Washington State University,
7 a very famous school along those lines, and that you probably
8 know 99.9% more about the business of forestry than most of the
9 people who have criticized you from outside of the system.

10 I think you probably have an expertise along the line of
11 forestry, but really maybe we should have sent you to Georgetown
12 to be a diplomat, because you have a tendency, I think probably,
13 to make a decision rather quickly and then execute it as you feel
14 best.

15 You are not exclusive along those lines. Most of us who
16 have been in public service for any length of time have made some
17 errors in judgment, some of them grievous, others not quite so
18 bad.

19 But the thing that occurs to me is the fact that you are
20 being recommended for service on a board which really never is
21 going to deal in the areas in which you have had problems, at
22 least in my judgment they are not, and maybe I don't know too
23 much about the Board of Forestry. But I think that you in this
24 instance would be one of how many people on the Board?

25 MR. WADDELL: Nine.

26 SENATOR CRAVEN: So, your judgment, although important,
27 and your decision, although important, is not necessarily going
28

1 to be the overriding or the abiding one, and you will have to be
2 one of a composite group to make and render decisions.

3 Not excusing, as you haven't done yourself, some of the
4 things that you have done in the past in government service that
5 didn't work out too well, I don't know that those things are
6 necessarily going to enter into what you're going to do in the
7 future or have been doing, and I don't know, either, that they
8 should be necessarily held against you.

9 You've been very up-front about it, and I can understand
10 why Henry said to you: Why didn't you serve those two or three
11 months.

12 Sometimes people get a bellyful of it and they say:
13 I've had it; I don't care what the situation is. We've all known
14 it, and we've all probably even had the same thoughts.

15 So, I would just say these things in your defense, if
16 you need any defense, but I understand what Senator Mello has
17 said. I don't in any way try to rebut them because it's kind of
18 post facto. That's a matter for the record.

19 But I think that we should look at a new horizon as it
20 relates to the job which you are involved with now and which you
21 will approach in the future, hopefully.

22 CHAIRMAN ROBERTI: Let me ask you a question, Mr.
23 Waddell.

24 Was the safety equipment in the Diablo Canyon incident
25 that Notice of Disciplinary Action of August, 1981 had indicated
26 that you had denied a request for. Was that fire safety
27 equipment, or was that general?
28

1 MR. WADDELL: It was breathing apparatus, Senator.

2 Chief Minor had recommended the type, normal type of breathing
3 apparatus used by the fire services, and in a radiological
4 atmosphere it was necessary, where this apparatus was to be used
5 in a radiological atmosphere, to use rebreathers because of the
6 dangers of taking radiological particulate matter into your --
7 respiring them.

8 CHAIRMAN ROBERTI: And the Chief had not requested --

9 MR. WADDELL: No, sir.

10 CHAIRMAN ROBERTI: -- those breathers?

11 MR. WADDELL: He had not requested that kind.

12 CHAIRMAN ROBERTI: Not wanting to belabor the comment,
13 however, the comment that you had told, evidently, a U.P.I
14 reporter didn't so much deal with rebreathers, although I may not
15 have the entire comment here. It was that we don't expect there
16 to be much fire there because there isn't much that could burn.

17 If the problem was one of breathing in a radiological
18 atmosphere, your failure to address that issue doesn't seem to
19 have been the question on your mind. The question on your mind
20 was safety equipment in case of burning.

21 Consequently, it causes me a little concern that there
22 may have been a somewhat cavalier, off-the-cuff attitude --

23 MR. WADDELL: No.

24 CHAIRMAN ROBERTI: -- on your part. I don't want to
25 make that accusation --

26 MR. WADDELL: No.

27

28

1 CHAIRMAN ROBERTI: -- regarding radioactive or
2 radiological atmosphere in the firefighters.

3 MR. WADDELL: I assure you, I've never approached my
4 responsibilities from a cavalier attitude.

5 But I was very much concerned about the radiological
6 atmosphere in which firefighters may find themselves, and I did
7 not want to expose them to danger if we could possibly avoid it.
8 And I felt that until we had researched with the NRC agency which
9 apparatus was appropriate, I did not want to make a commitment.

10 CHAIRMAN ROBERTI: Let me tell you where my mind is on
11 the thing. I think some of these points may have to be looked
12 into a little bit more thoroughly: the reason for your denial of
13 the San Luis Obispo Fire Department's request; were they making
14 an insufficient request; and was your denial for that reason, or
15 was your denial for reasons -- I'm stating hypotheses -- that you
16 did not appreciate the hazards.

17 That is a serious accusation. I grant it's leveled by a
18 person you may have had some dispute with and had two
19 disciplinary problems with that person, Mr. Pesonen. But I'm
20 very concerned in this whole area of safety, as I know you are,
21 that we don't want to make a mistake.

22 My recommendation to my colleagues would be to put this
23 over pending a more thorough investigation into the disciplinary
24 actions involved.

25 I understand Mr. Pesonen is under an agreement that he
26 cannot come and testify; am I correct?

27

28

1 MS. MICHEL: I think there was an agreement at that time
2 that there was not to be any discussion of it outside that
3 agreement.

4 SENATOR MELLO: One other case here. I appreciate your
5 thought, but I would just like some extra time myself.

6 Members of the Department of Forestry, however, only
7 have a three-month period pending the confirmation, unlike others
8 who have a one-year. So, if he was appointed April 26th, that
9 means that he would have to be confirmed by July 6th, before we
10 break on July the 19th. So, if we put it over for one week, it
11 would be the 10th, and that gives a very short time --

12 CHAIRMAN ROBERTI: We could put it over two weeks.

13 SENATOR MELLO: Two weeks would be the 14th. We'd have
14 to take it up then move it on the Floor before the final date. I
15 would appreciate two weeks if it doesn't put his confirmation in
16 jeopardy.

17 CHAIRMAN ROBERTI: We would frankly like to pursue this
18 a little bit more thoroughly. The problem is, evidently, because
19 of the agreement, Mr. Pesonen can't engage, and it's very
20 difficult for us to get all sides of the story without some kind
21 of probing.

22 Senator Craven.

23 SENATOR CRAVEN: I just want to ask a question on that
24 point.

25 Was there an agreement between Mr. Waddell and this
26 gentleman that you mentioned that when he retired, that would
27 kind of close the books on the situation?

28

1 CHAIRMAN ROBERTI: Yes.

2 SENATOR CRAVEN: And that there would be no further
3 comment, discussion, reporting, what have you?

4 CHAIRMAN ROBERTI: On Mr. Pesonen's part.

5 SENATOR CRAVEN: Nothing that your committee would do
6 would change that, would it?

7 CHAIRMAN ROBERTI: I don't think we can force Mr.
8 Pesonen to do that, no. I'm not sure. I'd have to check it out,
9 and that's obviously a consideration as well.

10 To the extent that we offer a personnel agreement, I
11 think that even attempting to do so, we should walk fairly
12 carefully.

13 SENATOR CRAVEN: Absent that, in other words, let's just
14 presume for the moment that that's a closed book and it's not
15 going to be reopened, then the only thing that I could see that
16 we would do by procrastinating, if I may use that word, would be
17 to redo by inspection what we already had done by Ms. Michel, and
18 I don't know that that is necessarily going to prove out any more
19 from one side or the other than we have already discussed by
20 virtue of Senator Mello's questions.

21 SENATOR MELLO: Let me just state to Senator Craven that
22 I just got this packet this morning, and then when I saw it, I
23 asked Ms. Michel if other Members of the Rules Committee had it,
24 and she said: No, it was just done at my request. And I said:
25 Well, I would like all Members of the Rules Committee to have
26 access to this information.

27

28

1 So, to my understanding, it was laid on each of your
2 seats when you came down here at 1:30. I would like all the
3 Members of the Rules Committee to read this as well. I've had a
4 brief period to go over it, and I picked out some of the
5 highlights, and there might even be more in there.

6 CHAIRMAN ROBERTI: In fairness to Mr. Waddell, also
7 along the lines of your questioning, it's just a question of time
8 economy that when we go through an investigation, it's the
9 person's controversial points that are the ones that are
10 explored. There just isn't time or usually the need to look into
11 the more positive aspects. And I assure you that if we do that,
12 even if there are problems as Mr. Waddell admits in one
13 disciplinary action, which is one he regrets and everybody makes
14 mistakes, I would suggest that there probably are compensating
15 factors that certainly wouldn't be wrong for us to explore as
16 well.

17 But I think these are serious accusations in the Diablo
18 Pesonen case regarding somebody's treatment of fire or
19 radiological safety. And I'm not making any accusations at all
20 to Mr. Waddell, but I really think that I would hate to be
21 responsible for making a mistake in this area.

22 SENATOR CRAVEN: The point, Mr. Chairman, that I have
23 made before is that perhaps in that instance Mr. Waddell was the
24 sole respondent. It was really up to him to make a decision or a
25 judgmental call, and he did what he thought was appropriate.

26 Perhaps it's been proven that maybe it was not quite so
27 appropriate, but the fact still remains that it was done, and
28

1 investigating is not going to in any way change what was done.
2 It may give us some more information, but it will not lead us to
3 any different conclusions.

4 CHAIRMAN ROBERTI: I appreciate your point.

5 The Chair, however, will entertain a motion that Mr.
6 Waddell be put over for two weeks. If somebody wants to make a
7 substitute, you're welcome to do so.

8 Senator Mello moves that confirmation hearing be put
9 over and continued for two weeks.

10 Is there objection? Hearing none, such will be the
11 order.

12 Mr. Waddell, we'll see you in two weeks, and hopefully
13 this will all be cleared up.

14 This Committee will stand in recess for five minutes, at
15 which time we will hear the confirmation of Jyrl James-
16 Massengale.

17 (Thereupon a brief recess was taken.)

18 CHAIRMAN ROBERTI: The meeting will come to order.

19 We will take up Governor's Appointee Jyrl James-
20 Massengale, Chair and Member of the Agricultural Labor Relations
21 Board.

22 We will ask you the same question we asked all the
23 Governor's Appointees, and that is why you feel you're qualified
24 to assume or retain, I guess after this amount of time, this
25 position?

26 MS. JAMES-MASSENGALE: Thank you, Mr. Chairman.
27
28

1 Mr. Chairman, Members of the Committee, prior to today,
2 I submitted a biographical statement to each of you. In
3 recognition of that fact, I will only briefly summarize my
4 qualifications to continue serving as a Member of the
5 Agricultural Labor Relations Board.

6 As you are aware, the ALRB is a quasi-judicial body,
7 responsible for administering a California statute which
8 regulates certain labor relations practices in California's
9 agricultural industry.

10 My education and experience during 12 of the past 14
11 years have been primarily focused on the labor relations field.
12 My undergraduate degree is in labor relations. As a law student,
13 to the extent that I could focus my legal education on a
14 particular area of law, it was on employment law.

15 My past employment includes a position as a legal intern
16 and later as an attorney with the National Labor Relations Board,
17 the federal agency after which the ALRB is patterned.

18 I also worked as a law clerk at a law firm which
19 represents labor unions. Similarly, I worked as an attorney with
20 a firm which represents management with respect to labor
21 relations.

22 My extensive and varied experience in labor relations
23 and my unquestionable legal ability enable me to interpret and
24 administer the Agricultural Labor Relations Act in the manner
25 envisioned by the California Legislature; that is, in a manner
26 which is fair and impartial, a manner which serves farm laborers,
27 farmers, and all of the people of California.

1 I am confident that my qualifications are not in
2 dispute.

3 Concern has been expressed by some organizations and
4 individuals over my former role as a legal advocate for
5 management.

6 Our legal system is based upon the belief that an
7 accused person has the constitutional right to be represented by
8 a legal counsel. Accusations that I am anti-farm workers because
9 I have represented accused employers is analogous to an assertion
10 that an attorney who represents individuals accused of crime
11 advocates crime.

12 There is a critical distinction between an attorney's
13 role as an advocate for a client and an individual's role as an
14 advocate for a cause. The former certainly should not be a basis
15 on which to assume bias.

16 While attempts have been made to frame my former
17 employment representing management as a negative attribute, in
18 fact it is a positive attribute which greatly serves the ALRB.
19 My practical experience in both agricultural and nonagricultural
20 industries, coupled with my well-rounded education, provides me
21 with an insight into the labor relations issues governed by the
22 California Agricultural Labor Relations Act that enables me to
23 enforce the Act in a manner which serves farm laborers, farmers,
24 and all of the people of California as directed by the
25 Legislature.

26 Attorneys with real world experience in labor law almost
27 universally come, represent either management or labor. Few
28

1 legal practitioners in the labor area have advocated for both
2 sides as I have.

3 In a recent speech before the National Academy of
4 Arbitrators, Sam Kagel, a prominent California labor arbitrator,
5 warned arbitration associations of the great disservice they were
6 doing to the labor arbitration field by denying admission to the
7 real labor experts; that is, those who practice labor law on
8 behalf of either management or unions.

9 The managing partner of the union firm at which I was
10 formerly employed was quoted in the San Francisco Chronicle as
11 making the following comments regarding my qualifications to
12 serve on the ALRB. She would, quote:

13 "be well qualified to consider
14 workers' interests. She has the
15 highest intellectual capabilities.
16 During the time she was working
17 for us, she demonstrated a sensi-
18 tivity to workers' concerns that
19 I was very comfortable with."

20 In summary, I am qualified to continue as a Member and
21 Chair of the Agricultural Labor Relations Board because my
22 ability and my attitude are such that I can fairly and
23 impartially administer and enforce the Agricultural Labor
24 Relations Act in the manner intended by the California
25 Legislature with the aim of bringing credibility to the Act and
26 to the agency.

27 CHAIRMAN ROBERTI: Thank you, Ms. Massengale.
28

1 I think I would like to raise one point, and I suspect
2 the reason why a person's past legal associations have been views
3 so critically in this area, frankly, stems from a whole array of
4 opposition that has been mustered prior to your being a Member of
5 the Board against appointees of Governor Brown. One, who I
6 remember in particular, if I'm not mistaken, a former Chairman of
7 the National Labor Relations Board, if not at least a Member,
8 and they were opposed and indeed defeated by such qualifications
9 simply because of perceived associations with the groups which,
10 as you well recognize, petitioned before the Board but are
11 probably the ones who developed the expertise in the
12 qualifications of those kinds of people who have the ability to
13 serve on the Board, because you evidently have to be an advocate
14 in this area.

15 But, I mean, I tend to remember Mr. Brown, Mr. Faust,
16 Ms. Kirk, all who were opposed because of former associations.
17 And half the Committee, sometimes the majority, sometimes the
18 minority, didn't think it was relevant at the time.

19 I tend to believe it's probably not relevant now. I
20 would say maybe your decisions may be a little more relevant to
21 the extent they implement or don't implement the law as we
22 envisioned it, and we'll probably get into that in the hearing.

23 I just state for the record, not so much in any
24 accusatory posture toward you, but to explain why in the world
25 the history is that these associations have become so relevant
26 is, quite frankly, it is those organizations which perceive
27 themselves as being supportive of grower interests have regularly

1 opposed appointees whom they felt had affiliations elsewhere,
2 either because they practiced law, or because they were
3 appointees of a national board that may not have been in favor of
4 the administration as they saw it.

5 So, I just think why you suddenly have become a target
6 for the same kind of thing, I think we have to put that into some
7 kind of perspective.

8 MS. JAMES-MASSENGALE: If I may comment, Mr. Chairman.

9 I am quite aware of the history of those concerns,
10 although I'm not aware specifically of the associations which
11 have been challenged.

12 But as I pointed out in my opening remarks, I think
13 there is a critical distinction between an advocate for a client
14 and an advocate for a legal or for a particular cause.

15 And I think as you recognized in your -- acknowledged in
16 your comment, it is the qualifications to interpret and implement
17 the statute which are critical.

18 My work experience, because it includes not only both
19 sides but also formerly working for the agency which is neutral
20 in labor relations is the real response to the concern that I
21 have worked for management, because I've also worked for unions,
22 and I've also worked for the National Labor Relations Board.

23 So, while it is voiced as a major concern, I think when
24 the Members of the Committee sit back and reflect on the real
25 issue, that's not entitled to really any weight, in my view.

26 CHAIRMAN ROBERTI: Thank you.
27
28

1 Are there any questions? Senator Petris, I'll let you
2 lead.

3 SENATOR PETRIS: To go into that, you probably shouldn't
4 be spending much time on it, but you kind of invited it in your
5 opening comment, and I think the comments made by the Chair are
6 not only appropriate but called for.

7 Do you view the NLRB as a neutral body at the present
8 time?

9 MS. JAMES-MASSENGALE: I view the agency itself as a
10 neutral body, and they're charged with a duty that is a neutral
11 duty in terms of the way they enforce the statutes.

12 SENATOR PETRIS: Are the statutes neutral?

13 MS. JAMES-MASSENGALE: The statute in terms of the
14 manner in which it is to be enforced is neutral. The statute, of
15 course, is primarily concerned with protecting workers' rights,
16 but there are certain methods, procedures and precedent which
17 have been established for achieving that purpose. And in terms
18 of implementing the statute, that is where the neutrality is the
19 real issue.

20 SENATOR PETRIS: I've always had the impression that the
21 NLRA, National Labor Relations Act, was not a neutral piece of
22 legislation. It was designed to do exactly what you said,
23 protect the rights of workers. You'll remember when it was
24 created in the '30s, under the leadership of Franklin Roosevelt,
25 it was tended to correct an imbalance at the time in the power
26 and certain basic rights of working people to bargain
27 collectively and so forth.

28

1 I wouldn't call that a neutral statute, but that's a
2 difference of opinion.

3 Do you consider the present composition of the NLRB as
4 made up of neutral persons on these issues, with a neutral charge
5 from the appointing authority, the President?

6 MS. JAMES-MASSENGAL: They certainly have a neutral
7 charge from the statute. I don't know what charge they've
8 received from the President; I have no idea.

9 SENATOR PETRIS: When you were working for them, was
10 that during the Reagan years?

11 MS. JAMES-MASSENGAL: No, it was not.

12 SENATOR PETRIS: Before?

13 MS. JAMES-MASSENGAL: Yes, it was.

14 SENATOR PETRIS: You haven't followed that since you
15 left?

16 MS. JAMES-MASSENGAL: Yes, I've followed it through the
17 press, and I have had conversations with individuals at the NLRB,
18 but in terms of what conversations they have had with the
19 President, I have no idea, Senator.

20 SENATOR PETRIS: Well, do you have any idea just from
21 the general statements made by the President himself in
22 announcing appointments?

23 MS. JAMES-MASSENGAL: I'm not aware of any statements
24 he made.

25 SENATOR PETRIS: Now, California's statute, is that a
26 neutral statute?

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1 MS. JAMES-MASSENGALE: In the sense that I described the
2 National Labor Relations Act, it is not neutral -- well, it
3 provides for rights of employees, and it envisions a particular
4 manner and process by which those rights are to be protected and
5 to be enforced.

6 Now, what neutral may mean to one individual may not
7 mean the same thing to me. I think that it is neutral in the
8 manner in which the Legislature envisioned that it be enforced.

9 SENATOR PETRIS: How about the composition of that Board
10 as it presently exists?

11 MS. JAMES-MASSENGALE: Whether it's neutral, I think
12 each Board Member has to make that judgment for himself --

13 SENATOR PETRIS: What's your impression?

14 MS. JAMES-MASSENGALE: That I am neutral, yes.

15 SENATOR PETRIS: What's your impression of the Board?

16 MS. JAMES-MASSENGALE: I do not pass judgment on any of
17 the other Members.

18 SENATOR PETRIS: Do you think it's fair-minded? We'll
19 get away from neutrality.

20 MS. JAMES-MASSENGALE: I feel that each individual
21 sincerely believes that he is enforcing the statute in a fair
22 manner.

23 SENATOR PETRIS: That's not my question.

24 MS. JAMES-MASSENGALE: Well, that's the best I can
25 answer, Senator.

26 SENATOR PETRIS: All right. What about the staff? Does
27 the staff have a prolabor bias?
28

1 MS. JAMES-MASSENGALE: I don't know whether the staff
2 has a prolabor bias, and I'm frequently faced with that question
3 by the statute -- I mean, by the staff.

4 I think the important issue is whether or not the
5 individuals, the parties who are governed by our statute perceive
6 a bias, because the perception is -- counts just as much as the
7 reality. And I have urged the staff to take the extra steps
8 necessary to achieve credibility in the eyes of all the parties
9 that are governed by our statute.

10 And I think that if the statute and if the agency is to
11 have credibility, that it is going to take a lot of work on the
12 part of the staff as well as the higher authorities.

13 SENATOR PETRIS: Have they achieved that?

14 MS. JAMES-MASSENGALE: No, they have not. I think you
15 can read the press and different organizations, individuals are
16 dissatisfied with the agency for different reasons, but the
17 bottom line is that there is not consensus that the agency is
18 performing in a fair and credible manner.

19 SENATOR PETRIS: General Counsel has stated many, many
20 times before his appointment and since, in many public places,
21 that the staff is prolabor and that in effect labor dominates the
22 Board, and the Board is beholden to it, and those people have to
23 be cleaned out and others brought in.

24 Do you share that perception on the basis of your
25 presiding over the last year or so?

26 MS. JAMES-MASSENGALE: I'm not in a position to pass
27 merit. I don't work with the same people that the General
28 Counsel works with.

1 Like I said, I am definitely dealing with perception,
2 because no matter what the reality is, if the parties governed by
3 our agency do not believe that the agency is performing in a fair
4 manner, we will never be able to fully effectuate the purposes of
5 the statute.

6 SENATOR PETRIS: How do you go about effectuating the
7 purpose if you have that obstacle? Do you keep working on them
8 internally?

9 MS. JAMES-MASSENGALE: Yes, in terms of having the staff
10 realize what their responsibility is. I think a lot of it is
11 solved through just awareness. If there is conduct that is
12 perceived as being biased, the staff needs to be cognizant of
13 that conduct. And a very minor part may be explaining in full to
14 a party why you're ruling against the party when there is
15 decisions made at the regional level. Something as simple as
16 that goes a long ways towards solving perceptions of bias and
17 judgments of bias.

18 SENATOR PETRIS: I'll ask you the same about the Board.
19 We've all read in the press the kind of criticism you've pointed
20 out. Some people say it's biased in one direction; others say
21 it's biased in another direction.

22 Do you think the Board, apart from the staff, has a
23 strong prolabor bias at the present time, during the time you've
24 been on it?

25 MS. JAMES-MASSENGALE: I don't know -- I don't know that
26 I could characterize decisions, I mean particularly since I
27 participate in the decision making process, as biased. I think
28

1 beliefs are sincerely held, and there are strong philosophies,
2 but I don't know if I'd say the Board shares any one particular
3 philosophy.

4 SENATOR PETRIS: I'm not talking about anybody's
5 sincerity. I don't want to get into that.

6 MS. JAMES-MASSENGAL: Well, see, I don't know how you
7 define bias.

8 SENATOR PETRIS: Some of the worst figures in the
9 history of mankind have been very sincere while they've butchered
10 people. Mengele, who just allegedly has been found, I guess. He
11 was very sincere in his beliefs, and he thought he was killing
12 people whose lives were worthless. That's the way he put it.

13 Now, nobody can challenge that man's sincerity. I'm not
14 interested in their sincerity.

15 I'm interested in how they conduct themselves on the
16 Board, and whether the charges are valid that they're strongly
17 prolabor and therefore are coloring their decisions by virtue of
18 that prolabor bias, or antilabor, whichever.

19 MS. JAMES-MASSENGAL: I really haven't made that
20 judgment at all. I have not made that judgment at all, because I
21 said, I think beliefs and the --

22 SENATOR PETRIS: Does that mean you --

23 MS. JAMES-MASSENGAL: -- interpretations and judgments
24 which are made in the decision making process are truly based
25 upon the way individuals interpret the statute, interpret the
26 facts. And whether or not that's called bias or something else,
27 I've just not evaluated in those terms.

1 SENATOR PETRIS: You can't tell from the conclusion?

2 MS. JAMES-MASSENGALE: No, reasonable minds can differ.

3 SENATOR PETRIS: I realize that, but which way do they
4 differ is what I'm trying to find out?

5 MS. JAMES-MASSENGALE: I think it's reflected in the
6 decisions.

7 SENATOR PETRIS: In a letter to me earlier this month,
8 you indicated that you have strongly encouraged adherence to the
9 intent of the Legislature as expressed in the statute, which I
10 think is commendable because that's your mission; isn't it?

11 MS. JAMES-MASSENGALE: It certainly is.

12 SENATOR PETRIS: That's your mission as a Member and as
13 Chair of the Board.

14 Can you give me some examples of encouragement in the
15 direction of complying with the statute, specific episodes, or
16 policy recommendations, or perhaps changes you might have
17 recommended, particularly as they might deal with compliance
18 orders and compliance situations?

19 MS. JAMES-MASSENGALE: Okay, well let me start with
20 first of all, any decision I make, whatever decision I reached, I
21 believed it was effectuating the purposes of the statute.

22 Secondly, election is an area that has been of
23 particular concern with me. I think that's the foundation of our
24 statute, that there be a free election where employees have the
25 opportunity to fully express their views.

26 In that regard I have participated in election training
27 in all of the regions to express or indicate my concern to the
28

1 regional staff as to how important I consider that whole process,
2 and to let them know that I expect that elections be run with the
3 highest level of integrity.

4 With respect to compliance, one of the particular areas
5 you pointed out, there's no question that we have a compliance
6 backlog problem. I have engaged in discussions with the General
7 Counsel. The Board as a whole has engaged in discussions, and
8 with the General Counsel, explored ways to resolve the compliance
9 problem. And I am aware of some of the things he's considering
10 in terms of computerizing certain functions.

11 SENATOR PETRIS: What steps do you think need to be
12 taken in order to accelerate that, cut down the backlog?

13 MS. JAMES-MASSENGALE: First of all, I think one of the
14 big steps has already been completed, and that is identifying the
15 status of cases, developing a case tracking system. One of the
16 big problems --

17 SENATOR PETRIS: How long did that take?

18 MS. JAMES-MASSENGALE: I don't know how long it took.
19 It's been completed. But from what I understand from the
20 historical aspect, for the first eight years basically nothing
21 was done, so there was a big -- I mean, just from that statement,
22 there was a big task to be achieved.

23 SENATOR PETRIS: Excuse me, I understand there's only
24 73-4 cases in the compliance stage now. You know, there were 50
25 or 40, whatever it was, when General Counsel took over.

26 Is that about right?
27
28

1 MS. JAMES-MASSENGALE: I'm not aware of what the figures
2 are.

3 SENATOR PETRIS: I also understand that there -- you
4 don't know how many cases there are on the compliance level?

5 MS. JAMES-MASSENGALE: No, I know that there was one
6 number that was about 50, but I don't -- I think that might just
7 be compliance that requires payment of money. There are
8 compliance cases which do not necessarily involve money, so I
9 think the numbers differ, depending of what you're talking about.

10 SENATOR PETRIS: I have a figure here, and I think it's
11 73 or 74. Now, it took a couple of years to come up with that
12 tracking report. I wonder why it would take so long, unless I'm
13 in error. Maybe it was only one year.

14 Why would it take so long, even one year, to find out
15 the status of easily classifiable cases as being in a certain
16 category of compliance, 70 of them, or 73-4?

17 MS. JAMES-MASSENGALE: At NLRB it would be an easy
18 process, but the way the files have been maintained in this
19 agency, it's not an easy process. It requires going through
20 every case which has ever been decided by the Board, the files of
21 the cases, to determine what the status is, whether or not there
22 has been compliance, what compliance is required.

23 You can look at the Board Order and basically determine
24 what the Board wants to be done, at least in a very general
25 fashion, but determining whether or not in each case that the
26 Board has decided over the last 10 years compliance has been
27 achieved is not an easy task, not as simple as it sounds.
28

1 SENATOR PETRIS: But they're not all in that category,
2 are they?

3 MS. JAMES-MASSENGALE: But you have to find that out by
4 going through all the cases. Now that we have a number, these
5 cases have not been complied with. That's the end result. It
6 sounds easy, but how many files had to be searched in order to
7 come up with that number. The Board has decided a lot more than
8 73 cases in the last 10 years.

9 SENATOR PETRIS: What does compliance status mean?

10 MS. JAMES-MASSENGALE: What compliance -- once the Board
11 -- initially the case is heard by an Administrative Law Judge.
12 If the parties request, the case is reviewed by the Board and it
13 can go up to the Appellate Court.

14 Normally if the Appellate Court enforces the Board's
15 Order, it comes back down for determination as to what needs to
16 be done in order to comply with the Board's Order.

17 SENATOR PETRIS: By whom? By the Board?

18 MS. JAMES-MASSENGALE: It goes back to the General
19 Counsel. The Board Order typically, almost universally, does not
20 include a monetary amount. So, for example, if the Board
21 requires that a certain employee, or 1200 employees, receive back
22 pay or make whole, there's no dollar amount specified. So, the
23 determination which must be made is what jobs were these
24 employees entitled to, whether or not -- at what rates, whether
25 or not an employee was entitled to be paid on labor day or
26 bereavement pay. There are a whole number of issues which can
27 fall in the compliance stage.
28

1 A specification which is a computation of the amount due
2 must be prepared. There's no clear-cut answer as to how much is
3 due in most cases. The employer may say one amount is due; the
4 labor organization may say another amount is due; the employee
5 could say a different amount is due; and General Counsel can say
6 another amount is due; the regional director can pick a different
7 amount.

8 SENATOR PETRIS: That's after it's been through all the
9 procedures?

10 MS. JAMES-MASSENGALE: This is the first time. It can
11 go through the procedures twice.

12 If the parties don't resolve the issue of what it takes
13 to comply with the Board's Order, there's a whole other trial
14 before the Administrative Law Judge. The decision of that Judge
15 is subject to review by the Board. That decision can again be
16 appealed to the Appellate Court and to the Supreme Court.

17 So, that's why compliance takes a long time.

18 The make whole issue is one of the tougher issues,
19 because the computation is complex, and that is something that
20 the Board has to solve either through rule making or through
21 decision making in terms of coming up with a simple formula which
22 is a remedy and not a penalty. And it's not -- there's not easy
23 answer. The Legislature didn't provide us with an easy answer.

24 So, when you're talking about achieving compliance, you
25 don't just pick up an Order and say: \$10,000 is due. It's a lot
26 more than that.

27

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1 SENATOR PETRIS: Some of them say that, though; don't
2 they?

3 MS. JAMES-MASSENGALE: No, they don't.

4 SENATOR PETRIS: None of them at all?

5 MS. JAMES-MASSENGALE: I can't think of a Board Order
6 which has a dollar amount, not until after it goes through this
7 entire stage, the second trial, and you come out with a
8 compliance order which is then, if a party chooses to appeal it
9 to the court --

10 SENATOR PETRIS: Is this the statute that's biased in
11 favor of the worker, which gives them a speedy remedy? He has to
12 go through the whole procedure twice just to find out what dollar
13 amount he might be entitled to?

14 MS. JAMES-MASSENGALE: I didn't write the statute.

15 If I could get back --

16 SENATOR PETRIS: Doesn't sound like a pro-employee
17 statute to me.

18 MS. JAMES-MASSENGALE: Well, I answered it terms of --

19 SENATOR PETRIS: You didn't write it.

20 MS. JAMES-MASSENGALE: No, that also that the statute, I
21 don't characterize it in terms of being biased or not. I think
22 it provides rights for employees, and it provides for a method of
23 achieving them.

24 SENATOR PETRIS: If they live long enough.

25 MS. JAMES-MASSENGALE: The other part of the answer to
26 your question as to what can be done, or why there's a problem
27 with compliance, is because the process is so tedious,
28

1 particularly preparing a specification, it's not something that
2 staff people give priority to, and that is going to be a matter
3 of changing the attitude and encouraging the people in the region
4 to give priority to preparing those specifications, and also a
5 possibility of using clericals to perform some of that function.

6 SENATOR PETRIS: Who determines what priority staff
7 gives? Does the staff determine it, or is it someone supervising
8 them who determines it?

9 MS. JAMES-MASSENGAL: The General Counsel determines
10 it, and as I understand it, now that they have a case tracking
11 system completed, the staff has been instructed to prepare the
12 specifications for those cases which have been identified as
13 needing specifications. And I think that's the 50 number,
14 figure, that was referred to.

15 SENATOR PETRIS: Well, I've lost my handy reference to
16 the number, but I think it's closer to 74. Somehow that magic
17 number sticks in my mind.

18 MS. JAMES-MASSENGAL: It's just I think the 74 may
19 include cases other than specifications. That's why there may be
20 a difference.

21 SENATOR PETRIS: They're all under the compliance
22 category, which means they've been through the whole process the
23 first time at least.

24 MS. JAMES-MASSENGAL: Yes.

25 SENATOR PETRIS: All right. Now, when they come back,
26 they don't come to you; they go to General Counsel?
27
28

1 MS. JAMES-MASSENGALE: Initially to the General Counsel,
2 and if the parties cannot resolve short of a hearing, then it
3 goes to the Judge, and then it will --

4 SENATOR PETRIS: I'm still trying to understand why it
5 took so long to track. Tracking is just a beginning point in
6 acquiring information.

7 What do they do? File them in the same drawer as the
8 complaint that just came in that day?

9 MS. JAMES-MASSENGALE: Well, they're filed in folders.
10 And when staff people leave the agency and a new individual picks
11 up the case, there may not be any indication of where the first
12 person left off. And when you're talking about cases which had
13 been sitting there for eight years, or now we're ten years later,
14 you don't have the same people working on the case.

15 SENATOR PETRIS: Is the turn over that great?

16 MS. JAMES-MASSENGALE: Since I have been here the turn
17 over has not been that great, but it has -- there has been a turn
18 over since the agency started.

19 SENATOR PETRIS: Are there enough people to handle these
20 things? Could the acceleration be helped by additional staff?

21 MS. JAMES-MASSENGALE: I don't think at this time. I
22 think what is needed initially is perhaps some more training, and
23 for the individuals who are there, to commit their time to
24 working on compliance. Until that step is achieved, it really
25 can't be determined whether or not additional people will help.

26 When there were substantially more people than there are
27 now, the problem was there and not solved, so I don't know that
28 additional people are the answer.

1 SENATOR PETRIS: What percentage of the individual
2 complaints, or the union complaints, have to do with dollars and
3 cents?

4 MS. JAMES-MASSENGALE: I don't know. I can't even guess
5 at that. I don't know.

6 SENATOR PETRIS: Wouldn't all the make whole cases be
7 concentrating on the amount due?

8 MS. JAMES-MASSENGALE: You mean the compliance cases or
9 complaints that --

10 SENATOR PETRIS: All complaints. You mentioned in the
11 compliance cases there are only a few that have a dollar amount.

12 MS. JAMES-MASSENGALE: I don't know that even a large
13 percentage of the complaints involve make whole, I mean, as
14 opposed to back pay. Make whole deals with just the bargaining
15 generally.

16 SENATOR PETRIS: Prior status, restoration, and their
17 total prior status; isn't it? That's part of it any way.

18 I'm trying to get an idea of what categories these
19 complaints fall into. Back pay is one, where there's a dispute
20 on the amount paid or not paid.

21 MS. JAMES-MASSENGALE: Let me answer the best I can.

22 I think most of the cases that are before the Board for
23 review involve, as a possible remedy, money in terms of make
24 whole or back pay. Because we don't get the complaints until
25 they come to us after the trial, I would have no idea of knowing
26 what the complaints contain, what kind of remedies they are
27 requesting, what kind of remedies might possibly be appropriate
28 based on the violations alleged.

1 SENATOR PETRIS: How many cases have you sat on since
2 you became Chair?

3 MS. JAMES-MASSENGALE: I think since I've been there,
4 maybe about 35 cases have issued.

5 SENATOR PETRIS: And last year there were 13 decisions;
6 is that right?

7 MS. JAMES-MASSENGALE: I don't think so. Last fiscal
8 year -- neither fiscal nor calendar year I don't think there were
9 13 decisions. I think there were 35.

10 SENATOR PETRIS: Maybe 35 last year, and maybe it's 13
11 this year so far.

12 MS. JAMES-MASSENGALE: Calendar year, yes.

13 SENATOR PETRIS: Which would give us 26 by the end of
14 the year.

15 MS. JAMES-MASSENGALE: And we only have about 30 cases
16 before us.

17 SENATOR PETRIS: I understand the Board takes about nine
18 months per decision; is that correct?

19 MS. JAMES-MASSENGALE: I don't know what the time is,
20 but I know it's far too long, yes.

21 SENATOR PETRIS: What is the reason for that lengthy
22 period?

23 MS. JAMES-MASSENGALE: The decision making process.

24 SENATOR PETRIS: After it gets to the Board?

25 MS. JAMES-MASSENGALE: After it gets to the Board. It's
26 not a simple matter of deciding whether there was or wasn't a
27 violation. For each case, there must be a majority on the
28

1 factual issues, not the factual scenario; whether A was employed
2 as a tractor driver or irrigator. You've got to get a majority
3 to agree.

4 On the legal issues, on what the law is the appropriate
5 standard, on how that standard applies to the facts at hand.

6 Some of the cases that we have before us involve
7 hearings in excess of 70 days, and a diligent Board Member and
8 Counsel will review, will read the entire record for that case.

9 So, I don't offer that as an excuse, but it is an
10 explanation. I think that setting a standard of getting cases
11 out in 90 days is not unrealistic once we get rid of the backlog
12 that we have, and some of the cases we have involved long
13 hearings and complex issues, and I think as a stable body of law
14 is established, it will be easier to review and dispose of cases
15 quickly.

16 SENATOR PETRIS: Well, it may not be a problem. I
17 notice in a compilation of the number of cases assigned to the
18 Board from 1979 down to this year, down to 1984-85, there's been
19 a very substantial drop. If it keeps going at that rate you
20 won't have any cases to worry about.

21 I'd like to some other time find out what the reason is.
22 I understand there's a much higher dismissal ratio now by the
23 General Counsel, so they never get to you. That's one of the
24 reasons.

25 But I notice in 1979-80, 50 cases were assigned to the
26 Board, including both elections and unfair labor practices; 44 of
27 them unfair labor practice charges, and 6 of them election
28

1 problems. And that went up to 64, and then 86 was the high point
2 in 1981-82, and then in 82-3 it went down to 59, and the same the
3 following year, and this last year it was only 28.

4 Can you shed any light on that, the reason for the
5 dramatic drop from a high point of 86 to last year's 28?

6 MS. JAMES-MASSENGALE: I can only say that there are
7 fewer cases coming to the Board. That's why the Board issues
8 fewer decisions.

9 SENATOR PETRIS: You don't know why?

10 MS. JAMES-MASSENGALE: No, I don't.

11 SENATOR PETRIS: If General Counsel gets a complaint and
12 dismisses it, then you never even learn about it; you have
13 nothing to do with it as a Board; is that right?

14 MS. JAMES-MASSENGALE: That's right. That's the way the
15 system works.

16 SENATOR PETRIS: Can you explain this make whole remedy
17 to us a little bit more?

18 MS. JAMES-MASSENGALE: Well, the statute provides that
19 the Board has the authority to make employees whole for losses
20 they suffer as the result of an employer's refusal to bargain
21 where the Board deems such relief appropriate.

22 Basically, it means that if the Board finds that there
23 has been a bargaining violation, and make whole is appropriate,
24 the Board can order that the employees receive what the Board
25 determines they would have received had there not been a
26 bargaining violation.

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1 CHAIRMAN ROBERTI: As of what time? How far retroactive
2 can it be made?

3 MS. JAMES-MASSENGALE: Well, the statute limits our
4 authority to award a remedy to a period not exceeding six months
5 before the charge was filed.

6 CHAIRMAN ROBERTI: The maximum amount of time that make
7 whole would be applicable would be six months prior --

8 MS. JAMES-MASSENGALE: The starting date.

9 CHAIRMAN ROBERTI: That's the starting date?

10 MS. JAMES-MASSENGALE: Yes.

11 CHAIRMAN ROBERTI: But you have an option not to go to
12 six months, I take it, as the starting date.

13 Does the Board have an option as to when the starting
14 date on make whole commences?

15 MS. JAMES-MASSENGALE: Yes, generally the Board orders
16 are framed to gear the commencement of the make whole order with
17 the date of the violation, if it's within that statutory period.

18 CHAIRMAN ROBERTI: I didn't want to interrupt Senator
19 Petris.

20 SENATOR PETRIS: It's all right, go ahead.

21 CHAIRMAN ROBERTI: Some accusations or correspondence
22 that I've received indicates that according to an opinion that
23 you dissented in the Del Porto case, the probability is that
24 according to your decision, you would find that make whole would
25 not be applicable in much, if any, cases.

26 Is that a proper interpretation of your opinion in that
27 case?

28

1 MS. JAMES-MASSENGALE: I think as you're aware, Mr.
2 Chairman, in a quasi-judicial function, such as the Board
3 performs, any decision is based on the particular case and as the
4 law applies to the particular case.

5 I couldn't even begin to extrapolate what I would do in
6 a general sense. I would apply the law as this particular remedy
7 is set out in the statute, that make whole is to be awarded where
8 it is deemed appropriate.

9 CHAIRMAN ROBERTI: What would constitute a bargaining
10 violation?

11 MS. JAMES-MASSENGALE: There are many types of
12 bargaining violations. An employer can refuse to bargain as a
13 method of challenging the certification, whether or not the union
14 should have legally been certified to represent a particular
15 group of employees.

16 An employer can outright refuse to bargain just because
17 he doesn't like the statute, or for some reason other than a
18 legal challenge.

19 An employer can engage in what is called, or either
20 party can engage, in what is called surface bargaining, where
21 they go through the motion of bargaining without any intent to
22 reach an agreement or come to a common ground.

23 And then there is another category, bad faith
24 bargaining, where specific acts are considered not to be in good
25 faith.

26 So, those are the general categories of bargaining
27 violations.
28

1 CHAIRMAN ROBERTI: Have you upheld make whole in any
2 decisions?

3 MS. JAMES-MASSENGALE: Well, I don't -- I mean, I can't
4 remember every decision I've decided because I'm -- one way to
5 not become personally involved in them is to decide them and let
6 that be the end of it.

7 Only because of the controversy generated, I know the
8 J.R. Norton case was a make whole case in which I -- I don't know
9 if there was any dissenters, but I was certainly in the majority,
10 and Del Porto's the other one that I'm aware of, and that also --
11 that's the case you just referred to, generated some reaction.
12 And I don't know whether or not I decided any other cases.

13 CHAIRMAN ROBERTI: Is make whole an exclusive remedy
14 under the Act?

15 MS. JAMES-MASSENGALE: Exclusive?

16 CHAIRMAN ROBERTI: Yes.

17 MS. JAMES-MASSENGALE: No, the Board has available to it
18 any number of remedies.

19 CHAIRMAN ROBERTI: If you invoke make whole as the
20 remedy the petitioner seeks, or whatever the appropriate
21 designation is, can you apply to the petitioner another remedy
22 besides make whole?

23 MS. JAMES-MASSENGALE: Yes, and generally do, and the
24 Board always, I think, provides -- requires that a respondent, be
25 it an employer or a labor organization, cease and desist from
26 whatever unlawful conduct the Board has found the respondent to
27 have engaged in, requires that notices be posted, mailed to
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1 employees, read to employees, reinstatement if it is order, if
2 there has been some unilateral change made, if the labor
3 organization requests that that change be rescinded, that is an
4 order that the Board, or provision that the Board can order.

5 So no, it is by no means the exclusive remedy.

6 CHAIRMAN ROBERTI: Thank you, Senator Petris. I return
7 to you.

8 SENATOR PETRIS: I had just two or three other areas I
9 wanted to explore.

10 Do you think on that make whole that the criteria should
11 be more specific in the statute? The criteria for application of
12 a make whole remedy, other than saying where ever the Board deems
13 it appropriate?

14 I understand it centers on good faith intentions to
15 bargain collectively. Now the extreme case, I guess, would be
16 where an employer just flatly refuses to bargain, period. And
17 then some individual is aggrieved and comes in with a complaint
18 saying: Employer wouldn't even talk to us about it, and if the
19 employer had, my situation would have improved in the following
20 respects. So then the make whole order is made. That's kind of
21 broad.

22 You mentioned bad faith, that's one of the ingredients.

23 Do you think it would be helpful to have the statute
24 either have some guidelines in it, or specify when make whole
25 would be applicable?

26 MS. JAMES-MASSENGALE: I haven't passed any judgments on
27 that. One of the things I think is important in my role as a
28

1 Board Member is to refrain from engaging on the turf of the
2 Legislature. I think it is up to the Legislature to determine
3 what is best.

4 I don't think there will ever be any ideal statute, and
5 what ever I'm given to work with, that's what I will work with.
6 It is not impossible for me to determine when make whole is
7 appropriate within the scheme of the statute.

8 SENATOR PETRIS: How are you going to know if the people
9 who are administering the statute don't inform us what the
10 difficulties are?

11 What you're saying is that you're satisfied with the way
12 the statute reads now, or if you have some ideas, you don't want
13 to impose on us by giving them to us?

14 MS. JAMES-MASSENGAL: No, what I'm saying is that I
15 don't make any determination whether I'm satisfied or not. I
16 think I can achieve the goals of the statute the way it is
17 whether or not there can be something better, or whether this is
18 the worst thing that's possible to come out.

19 SENATOR PETRIS: What do you look for? I come in and I
20 say: I have a complaint, and I make application for the make
21 whole remedy.

22 What do you look for?

23 MS. JAMES-MASSENGAL: Look at all the circumstances and
24 determine whether -- I mean, there's a whole body of law, the
25 NLRB precedent, 50 years of cases out there, to determine whether
26 or not this is a bargaining violation, and whether or not the
27 immediate issue would be -- whether or not a make whole remedy
28

1 would achieve the purpose of the statute protecting rights,
2 encouraging bargaining, and the other specifics.

3 SENATOR PETRIS: There must be some pattern there.
4 There must be some things that are clearly a violation, that
5 clearly come under the statute, some types of episodes.

6 MS. JAMES-MASSENGALE: Episodes are so different that I
7 don't think that conclusion can be reached. I think each case
8 must be judged based on the facts of the case and in light of the
9 precedent and the standards and the particular words of the
10 statute.

11 SENATOR PETRIS: You can't point to any pattern of facts
12 that repeat themselves enough to be readily identifiable as a
13 typical type of problem?

14 MS. JAMES-MASSENGALE: No, I can't. And reviewing -- I
15 think I mentioned to you, I probably reviewed about 35 cases.
16 Even if half of those cases were make whole, which I doubt, that
17 would not be sufficient in my view to announce some general
18 principles as to when make whole would be appropriate.

19 SENATOR PETRIS: If the complaint is clearly established
20 and proved that the employer wouldn't even talk, is that a case
21 for application?

22 MS. JAMES-MASSENGALE: Again, if that's the only
23 circumstance, it depends on the reason.

24 There are technical refusals to bargain where the
25 employer does not talk because that is a legal challenge. That
26 is the only way that the certification can be challenged. The
27 process, both our process and the process under the National
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1 Labor Relations Act does not permit another method of
2 challenging.

3 The Supreme Court, the California Supreme Court has
4 said: No, you cannot apply make whole automatically under those
5 circumstances.

6 So, the cases truly have to be judged on the facts.

7 SENATOR PETRIS: Can you give us any examples of the
8 application of make whole, one or two? I'm trying to learn about
9 it. It's always been an area of mystery to me.

10 MS. JAMES-MASSENGALE: I think it's an area of mystery
11 to the Board.

12 SENATOR PETRIS: Some examples of where it's been
13 applied?

14 MS. JAMES-MASSENGALE: There have been -- not where I
15 have applied it, because the cases have not come before me, but
16 there have been --

17 SENATOR PETRIS: There haven't been any applied since
18 you became Chairman?

19 MS. JAMES-MASSENGALE: Yes, there have, the J.R. Norton,
20 which is a case which had been in the system already, but I'm not
21 aware, I can't say that there haven't been any applied because I
22 don't remember the cases once they've gone past me for review.

23 But a technical refusal to bargain case, where there is
24 clearly no basis in the law for challenging the certification,
25 perhaps the case has been up to an Appellate Court, the Supreme
26 Court, and back down, and the Court has affirmed the legitimacy
27 of what the Board has done in the election process, and the
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1 employer says: I don't care what the Supreme Court says, I'm not
2 going to bargain. That might be a good example of where make
3 whole would be applied.

4 SENATOR PETRIS: That's pretty extreme, though. Are you
5 going to wait for that before you get any make whole?

6 MS. JAMES-MASSENGAL: I said I will judge each case on
7 the facts.

8 SENATOR PETRIS: Now let's get back to compliance for a
9 little bit.

10 In 1983, there was a Memorandum of Understanding. I
11 guess it was between the Board and the General Counsel. The
12 result of which was that there was a manual to be put together on
13 compliance procedure, and that there was to be an appointment of
14 an officer by the General Counsel, a Compliance Officer.

15 You're not the General Counsel, but you're Chairman of
16 the Board. I understand that there's no manual and there's no
17 Compliance Officer. Can you tell me why?

18 MS. JAMES-MASSENGAL: I've been at the Board, I think,
19 about 11 months now. About perhaps two months ago, the Board
20 finished its manual and gave it to the General Counsel for
21 review. We got a part of that -- a portion of what he has
22 reviewed back to us this past week. So, there is not a final
23 manual; there is a manual which the Board -- and I believe it was
24 started even before I came there -- but it took them nine months
25 to get it to the General Counsel, and we are not getting it back,
26 and there will be discussion as to how -- what will finally be
27 included in the manual.

1 SENATOR PETRIS: I understood the agreement was in 1983.

2 MS. JAMES-MASSENGALE: I wasn't there.

3 SENATOR PETRIS: But that's more than nine months. You
4 know, this is '85.

5 MS. JAMES-MASSENGALE: The Board was responsible for
6 preparing the manual.

7 SENATOR PETRIS: Yes, I know.

8 MS. JAMES-MASSENGALE: It took us nine months because
9 it's not an easy project, and there are lots of issues that are
10 covered in the manual. In fact, if the Board had started from
11 scratch, it would have taken a lot longer than nine months, but
12 they did have the guidance of the NLRB manual to help them along.

13 SENATOR PETRIS: Otherwise it would have taken longer.

14 MS. JAMES-MASSENGALE: Yes, and I'm sure it took NLRB a
15 lot longer. In fact, they're doing a compliance training manual
16 that I have been trying to get access to, and the manual they use
17 they have spent now ten months revising it to get a final copy,
18 and they anticipate another six months just to complete that
19 process.

20 SENATOR PETRIS: Was there a time limit in this memo for
21 the development of the manual? Within a year, or two years, or
22 what ever?

23 MS. JAMES-MASSENGALE: At the ALRB?

24 SENATOR PETRIS: Yes.

25 MS. JAMES-MASSENGALE: No, not that I'm aware of.

26 SENATOR PETRIS: I assume, then, that there's no officer
27 because there's no manual.

1 MS. JAMES-MASSENGAL: No, I don't know why there's no
2 officer. The General Counsel is responsible for appointing the
3 officer.

4 SENATOR PETRIS: There ought to be an officer whether
5 there's a manual or not, because there's a backlog in compliance.

6 MS. JAMES-MASSENGAL: Well, there is someone
7 functioning -- I mean, performing the function of that person,
8 and there are different judgments as to whether or not it's being
9 adequately performed. But the function, I mean, in terms of
10 someone overseeing, and that's about all the Compliance Officer
11 does, and coordinating the activities, that function is being
12 performed so far as I'm aware.

13 SENATOR PETRIS: Now, I know you seem to be very
14 reluctant to get onto our turf, but you're being invited now to
15 get onto our turf.

16 After having been a labor lawyer for as many years as
17 you have, and your experience in the NLRB, and as Chairman of
18 this agency, you should have a pretty working knowledge of the
19 statute; right?

20 MS. JAMES-MASSENGAL: Yes, I do.

21 SENATOR PETRIS: Do you see any major defects in the
22 statute which make for an inherently unfair situation, either as
23 it affects the employee or the employer that should be corrected?

24 MS. JAMES-MASSENGAL: Neither as a labor attorney or as
25 a Board Member have I ever evaluated the statute in those terms.
26 I have expressly refrained from doing so, making any evaluation
27 that would require me to sit down and evaluate the words of the
28

1 statute, all the cases that have been decided, in light of the
2 question that is being asked, and I have never done that.

3 SENATOR PETRIS: Don't you have a gut feeling as to
4 whether the thing is fair or not, or whether the way it's
5 administered is fair or not?

6 MS. JAMES-MASSENGALE: In my present role, it doesn't
7 matter whether or not I think the terms of the statute are
8 correct. My role is to enforce the intent of the Legislature.
9 And so, I've just never given any thought to whether or not I
10 think they're right or wrong.

11 And it's difficult to do, but I think that is what Board
12 Members have to do, unless they're asked by the Legislature as a
13 body to make that determination, and then I think what would come
14 out would probably be useless because the opinions would be so
15 different.

16 SENATOR PETRIS: I have to get a majority vote in each
17 House to ask you the question as to whether you have a basic
18 sense of whether the thing is fair or not.

19 MS. JAMES-MASSENGALE: No, I appreciate the question.
20 I'm just saying my answer is that I've never made that
21 evaluation.

22 SENATOR PETRIS: Never thought about it.

23 MS. JAMES-MASSENGALE: I mean, it would really require
24 sitting down, evaluating each provision of the statute,
25 evaluating the cases that have been decided, anticipating the
26 possible factual scenarios that could come up under any provision
27 of the statute to really make that judgment.
28

1 SENATOR PETRIS: All right. Let's go back to the
2 process you described. There's a complaint filed; there's a
3 staff review, General Counsel's staff review; there's a
4 determination made by them whether to pursue it or not; if it's
5 pursued, it leads to an administrative hearing; if it goes
6 through all those steps it then goes to the Board for your
7 review; and beyond your Board, it goes into the courts all the
8 way to the Supreme Court if necessary. Right?

9 MS. JAMES-MASSENGALE: That's right.

10 SENATOR PETRIS: I understand the average time is about
11 seven years from start to finish on these cases. Seven years to
12 get to the compliance stage before they start all over again; is
13 that right?

14 MS. JAMES-MASSENGALE: I don't know what the time is,
15 but it is unduly long.

16 SENATOR PETRIS: Now, if you think it's unduly long,
17 then unduly means there's something wrong with it.

18 MS. JAMES-MASSENGALE: I think that the purposes of the
19 statutes would be better effectuated if things moved faster.

20 SENATOR PETRIS: What can we do to achieve that?

21 MS. JAMES-MASSENGALE: I don't know.

22 SENATOR PETRIS: Would a change in the law accomplish
23 it, shorten the procedure somehow?

24 MS. JAMES-MASSENGALE: I don't know whether you could
25 achieve it within the parameters of due process. If you're going
26 to cut off the right of review by the Board, or by the courts,
27 then there may be some due process problems. I don't know.
28

1 But I don't think it can be easily achieved in light of
2 the review process that is envisioned by our legal system.

3 SENATOR PETRIS: Are you saying even though it's unduly
4 long, it's the best we can do? Can't do any better?

5 MS. JAMES-MASSENGALE: I think within the agency we can
6 do better in terms of shortening the processing of the cases from
7 charge to the time the Board gets it out, but in terms of some of
8 the other time limits, what happens in the courts --

9 SENATOR PETRIS: How can you accomplish that within the
10 agency?

11 MS. JAMES-MASSENGALE: I think it's up to those of us in
12 the agency to accomplish. I don't really know that the
13 Legislature has to do anything, just in terms of our establishing
14 some better targets and finding a way of achieving those targets.

15 It's simple enough to set that we're going to get a case
16 out in 90 days, but it's not as easy to achieve that goal. But
17 there are some things that can be done. The NLRB, not so much at
18 the Board level, the review process, but there are other places
19 in the agency where they have some very clear time limits and a
20 constant monitoring effort to see that those time limits are
21 complied with. And even at the Board they do have time limits,
22 but depending on who Chairs the Board, they're more or less
23 diligent in enforcing those time targets.

24 SENATOR PETRIS: Are they being enforced now under the
25 current Chair?

26 MS. JAMES-MASSENGALE: At the NLRB, probably not at the
27 Board level. Just reading the paper, there are some cases that
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1 have been sitting there a long time, but I'm sure in the regional
2 levels and, you know, before it finally gets to the Board
3 Members, that those time targets are taken very seriously.

4 SENATOR PETRIS: Do you think we should have them in
5 this statute?

6 MS. JAMES-MASSENGAL: They're not in the statute.

7 SENATOR PETRIS: No, in the ALRB you don't have such
8 rigid time limits.

9 MS. JAMES-MASSENGAL: I don't know whether we don't
10 have them at all, or whether or not they're not being achieved,
11 but there's no question that we should have time targets as
12 guidelines. You don't always achieve them because you end up
13 with the average. I mean, if you say: We're going to -- the
14 average hearing time of a case will be three days. If it takes
15 90 days to put on a case, you can't cut them off in 3 days.
16 Again, you run into due process considerations.

17 But time targets, I don't think there's anything wrong
18 with having time targets to strive for. But one of the problems
19 that we have in the agency right now is that you have to
20 establish a working knowledge and procedure to determine what is
21 a reasonable time target, and that requires involving routine
22 matters of handling things to see how long it should take to get
23 a task accomplished.

24 SENATOR PETRIS: I just have a couple more.

25 When you're sitting there hearing these cases, do you
26 try to put yourself in the shoes on the employer who's having
27 difficulties, and maybe challenging this or that, to try to
28 better understand what their problem is?

1 MS. JAMES-MASSENGAL: I don't think -- no, not in that
2 term. I mean, I have an understanding of industry and of unions
3 and employee concerns, but I think what ever I do is in light of
4 the statute. While I may appreciate the concerns of any party, I
5 think -- I mean, I know the ultimate judgment that I make is
6 based on whether or not their conduct conforms to the statute.
7 Even though I may understand why they did something, if it's a
8 violation of the statute, it's a violation of the statute.

9 SENATOR PETRIS: How about the other side? Do you ever
10 try to --

11 MS. JAMES-MASSENGAL: I think with all sides.

12 SENATOR PETRIS: -- to envision yourself as an employee
13 in the current difficulty of a particular complainant?

14 MS. JAMES-MASSENGAL: Again, only in term of whether or
15 not it's in violation of the statute or in compliance with the
16 statute.

17 I guess that's the best answer I can give you.

18 SENATOR PETRIS: Thanks, Mr. Chairman.

19 VICE-CHAIRMAN CRAVEN: You're welcome.

20 Senator Mello. Hopefully, Senator Mello, your questions
21 will not be repetitive or long.

22 SENATOR MELLO: Well, Mr. Chairman --

23 SENATOR PETRIS: The questions aren't long; the answers
24 are long.

25 VICE-CHAIRMAN CRAVEN: Well, one breeds another.

26 SENATOR MELLO: Did you say I should not ask any
27 questions?
28

1 VICE-CHAIRMAN CRAVEN: No, not at all, but Senator
2 Petris was very introspective in his questioning, and I'm
3 confident that there cannot be too much left unsaid.

4 SENATOR MELLO: The difference is, Senator Petris comes
5 from a nice area around San Leandro, and I come from a nice area
6 around Monterey Bay, where the makeup is far different than San
7 Leandro.

8 VICE-CHAIRMAN CRAVEN: Well, if you're going to ask her
9 about the artichokes, that's something else again.

10 SENATOR MELLO: Well, seriously, as a Member of this
11 Committee, I feel I should be entitled to the same --

12 VICE-CHAIRMAN CRAVEN: You're entitled to everything.
13 I'm just trying, with the thought of the agenda which you have
14 before you, which will take hours to go over in Executive
15 Session, I'm looking at the clock.

16 She's been on the stand here for over an hour, and
17 hopefully you can make your questions short, and we'll try to
18 move it along. We still have to hear from people in support as
19 well as those in objection.

20 SENATOR MELLO: I realize that, but I have some parades
21 to ride tomorrow in my district, mainly because I have to go home
22 to things like that, and I took the time on Mr. Waddell, and I
23 think justifiably, because in looking at his case there was some
24 questions that I felt had to be brought to his attention.

25 I have some similar questions here now. But if the
26 Chairman feels I shouldn't pursue it, I'll just refrain from
27 asking questions, and then we'll --
28

1 VICE-CHAIRMAN CRAVEN: The Chairman is not suggesting
2 that you do not pursue it; merely suggesting that in the pursuit
3 of the questions, you consider expedition.

4 SENATOR MELLO: Well, I hear the Chairman, but I feel
5 that my style of pursuing is something that belongs to me, and I
6 may pursue it that way, and at any time you want to cut the
7 meeting off, then that's your prerogative.

8 Ms. Massengale, I'm interested, and the reason I
9 responded with a little bit of being upset at Senator Craven is
10 because my questions are different than his. But I have a
11 similar concern, and I have a series of questions, and I'm not
12 going to shorten them up by the Chairman's comments because I
13 feel before I can vote on this case, we've had several
14 discussions before, and I'm impressed with your straight
15 forwardness and the fact that you have quite a background in this
16 area that you specialized in.

17 Some of the concerns I feel, I'll start right out with
18 one. You did work for a firm, Seaforth, Shaw, your former
19 employer, and the information I have, they were counsels for Sun
20 Harvest, E.J. Gallo, Tenaco, Shell Oil.

21 Were you involved in all of these cases yourself?

22 MS. JAMES-MASSENGALE: Sun Harvest was before I came
23 with the firm. I don't think they were a client at any time I
24 was employed at the firm.

25 Shell, I'm not aware that they were a client.

26 SENATOR MELLO: Sam Andrews was a case in which you were
27 the lead attorney on; is that correct?

1 MS. JAMES-MASSENGAL: That's correct, on some of the
2 cases I was.

3 SENATOR MELLO: These cases that your former firm, then,
4 were a counsel for, how do you feel that you would have to
5 conduct yourself when these matters may come before the Board?
6 Would you have to refrain from participating because of conflicts
7 of interests, or do you feel you could participate?

8 MS. JAMES-MASSENGAL: I have refrained from -- well,
9 certainly any case that I participated in, I would -- I can't
10 imagine any circumstance where I would participate in the case.

11 The issue has come up frequently with respect to another
12 Board Member who was a regional attorney and executive secretary
13 in the agency who had to make a decision regarding cases prior to
14 the time the case came to the Board for review. And there are
15 motions requesting that particular Member to recuse himself.

16 I have voluntarily recused myself from any case in which
17 I participated in, or cases which were pending at the firm,
18 whether or not I knew about them when I was employed there.

19 And with respect to Sam Andrews, because I did
20 extensively represent that particular client, I have recused
21 myself from any cases, even though they may have had another firm
22 represent them.

23 But thus far, I have -- because it has not been
24 necessary for me to participate in any case in which the firm
25 represents the client or the respondent, I've not done so. And
26 there just aren't that many cases.

1 SENATOR MELLO: What about at one time you were with the
2 firm that represented some labor groups. Was that in California
3 or back in Ohio?

4 MS. JAMES-MASSENGAL: That was in Chicago, and at the
5 time I was at the National Labor Relations Board, I took the same
6 approach. I did not participate in cases which were pending at
7 the firm. In fact, when I initially worked for the NLRB, I
8 worked for the union firm at the same time, and there was a
9 written understanding between them that I would not have any
10 contact with cases while I was at the NLRB, with cases where the
11 union firm was the attorney of record. And once I became an
12 attorney with the National Labor Relations Board, I did not
13 handle any cases which had been pending at the union firm during
14 the time I was employed there.

15 SENATOR MELLO: Would any of those prior cases have any
16 carry over effect into California as far as the ALRB is
17 concerned, where you'd have to abstain?

18 MS. JAMES-MASSENGAL: I doubt it. That was back in
19 1977 and '78. I don't even remember what the cases were.

20 SENATOR MELLO: Based on your annual report, I see some
21 of the statistics are moving in different directions. For an
22 example, the filing of unfair labor charges have diminished
23 considerably, and especially this last year. The information I
24 have, there was a high of about 1312 cases back in 1979 and '80,
25 and this year the charges that were filed were down to about 660.

26 Do you have any explanation for that?
27
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1 MS. JAMES-MASSENGAL: Senator, as you may be aware, the
2 Board -- neither the Board nor any of its agents or employees of
3 the agency can initiate charges. We get a charge because someone
4 files a charge. And anyone other than a Board employee can file
5 a charge.

6 So, it is -- I mean, you'd really have to ask
7 individuals or organizations who file charges with us as to the
8 explanation to why there has been a drop. It's not something
9 that is internally achieved.

10 SENATOR MELLO: Yourself as Chair of the Board, though,
11 aren't you aware of these changes in the statistics, and to what
12 do you account for them moving in that direction?

13 MS. JAMES-MASSENGAL: Pardon me?

14 SENATOR MELLO: The fact that you are Chair of the
15 Board, there are less charges being filed out in the field. Some
16 are alleging that perhaps there's a disincentive for workers to
17 file charges because of feeling that they will not get fair
18 treatment with the Board, or maybe one could argue that the
19 situation has changed out there where there's less incidents
20 where charges have to be filed.

21 It's unclear in my mind what might be the case.

22 MS. JAMES-MASSENGAL: All I can say is, I think, based
23 on the decisions which have issued during the time I've been at
24 the Board, I do not perceive any difference that would warrant a
25 legitimate conclusion that there is no purpose in filing a charge
26 with the Board.

27

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1 SENATOR MELLO: Another statistic, a number of charges
2 were dismissed. It would seem to me, if you have less charges
3 filed, you have a proportional relationship between the number of
4 cases being dismissed. In 1984-85, a half year, you had 403
5 cases; for eleven months you had 641 cases, and that's far
6 greater than any period during the previous five or six years.

7 MS. JAMES-MASSENGAL: The Board is not involved in the
8 investigation of charges or the decision as to whether or not a
9 charge should be dismissed or should go to complaint.

10 But I can say that at the NLRB, a substantial number,
11 very high percentage of charges, are either withdrawn, usually
12 withdrawn at the direction or the suggestion of the regional
13 officer, or are dismissed, or are settled.

14 A charge can be disposed of by way of proper
15 investigation, by way of resolution at a very early stage, or by
16 litigation and either -- and an ultimate determination, maybe,
17 that there was no merit in the charge from the very beginning.

18 So, one possible explanation for the difference in the
19 dismissal of charges, and I'm not involved in the process so I
20 can't really speak with any authority, is that investigations are
21 being better conducted. And, rather than money spent litigating
22 to find out seven years down the line, after the Appellate Court
23 has finally ruled that there was no merit to the charge, that
24 process or that result is achieved by a proper investigation and
25 analysis of the facts and the law at a very early stage.

26 SENATOR MELLO: Another statistic is the number of
27 decisions made by the Administrative Law Judges have reached an
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1 all time low of 17 cases during 84-85, and 11-month period, where
2 before they had as many as 73 cases in 1980.

3 MS. JAMES-MASSENGAL: The ALJs, like the Board, can
4 only decide cases which come before them. The last statistics I
5 saw on the ALJs' productivity or progress is that they don't have
6 any cases which are older than four months. So, they are
7 performing their responsibilities in a very timely manner, but
8 there are fewer cases being tried, and therefore ALJs issue fewer
9 decisions.

10 SENATOR MELLO: Was your staff cut back in this year's
11 budget?

12 MS. JAMES-MASSENGAL: No, it was not.

13 SENATOR MELLO: I mean the whole staff of the ALRB?

14 MS. JAMES-MASSENGAL: No, it was not.

15 SENATOR MELLO: No more cut backs?

16 MS. JAMES-MASSENGAL: No.

17 SENATOR MELLO: Did you convey any recommendation
18 yourself to the Governor in relationship to the staff of the
19 ALRB?

20 MS. JAMES-MASSENGAL: We had initially requested of
21 Finance two additional Board counsel, and it was based on
22 predictions of our workload, which no longer proves to be valid
23 as time progressed. And the Department of Finance determined
24 that there was -- because those statistics had changed and they
25 were drastically different than what we had predicted would be
26 our workload, there was not a need for the additional two people.

27
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1 SENATOR MELLO: What about the issue that Senator Petris
2 touched on, the make whole remedy.

3 I'm interested in what is the longest case outstanding
4 you have for make whole that still is not resolved or settled?

5 MS. JAMES-MASSENGALE: I don't know.

6 SENATOR MELLO: You're not aware?

7 MS. JAMES-MASSENGALE: No, I mean, I don't know; I
8 wouldn't know.

9 SENATOR MELLO: Are there a great number of cases? I
10 don't have the annual report here, but it seems to me there was
11 one case that was either five and a half or six years that has
12 not been resolved.

13 MS. JAMES-MASSENGALE: I suspect that that's an accurate
14 representation. I just don't know what the precise time -- I
15 don't know whether it's five years or eight years, but I know
16 there are some cases that have been out there a long time.

17 SENATOR MELLO: Is the Board concerned about the
18 resolving of the make whole cases, or are they just letting them
19 hang on, or what is it?

20 MS. JAMES-MASSENGALE: No, the Board is very concerned
21 about it, and as I indicated, the General Counsel has represented
22 to me that the regional staff has been instructed to prepare the
23 specifications for the cases which are outstanding.

24 It's a matter of resolving, you know, resolving those
25 cases either by getting the agreement of the parties as to what
26 amount is due, or if necessary, going through the formal trial
27 proceeding. I mean, that's less desirable if you can achieve
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1 that same end by getting the parties to agree that this what is
2 meant by the Board's Order. That's certainly a better way to
3 effectuate the purpose of the Act than to try a case for five
4 weeks and the appeal it to the Board and then appeal it to the
5 court.

6 Most NLRB bases are resolved in that fashion, where the
7 compliance with the Board's Order is resolved short of formal
8 trial.

9 SENATOR MELLO: I've been told by many different groups
10 that the long delay in the settlement of make whole cases makes
11 it nearly impossible to try, once the award is made, to attempt
12 to try to pay back the workers, who after four or five years are
13 long gone and unable to find them, and such a complex thing that
14 it's nearly impossible to comply with the payment.

15 It would seem to me that both sides, be it workers or
16 agriculture, if there is a make whole agreement levied, it should
17 be done and expeditiously carried out so that people aren't left
18 in such a state where they're unsure of getting their funds and
19 they're unsure of their ability to contact the workers who are
20 entitled to these funds.

21 MS. JAMES-MASSENGAL: Senator, for all of the reasons
22 you've cited, I fully agree with you. It's just got to be done
23 faster.

24 SENATOR MELLO: Who's responsible for speeding it up?
25 Is it the Board, or the Legislature, or who?

26 MS. JAMES-MASSENGAL: No, the Board and General Counsel
27 are jointly responsible for the compliance function. Much of it,
28 the major portion, has been delegated to the General Counsel.

1 It becomes a question of how fast is fast enough. There
2 was a major task to be achieved, and that was identifying the
3 status of cases, developing a record tracking system, and now the
4 issue is how can -- now that we know what needs to be done, how
5 can get it done faster. And there are different opinions on how
6 that can be achieved, but I certainly share some of the General
7 Counsel's suggestion that computerizing the function to the
8 extent it can be; consideration to, you know, using clerical help
9 to achieve some of that, and the other thing is just somehow
10 motivating the people in the regions to get down to preparing the
11 specifications, or seeking agreement of the parties to come up
12 with the amounts that are due under the Board Order.

13 SENATOR MELLO: Mr. Chairman, I'll forego the balance of
14 my questions in the interest of time.

15 VICE-CHAIRMAN CRAVEN: Very kind of you, thank you very
16 much.

17 Senator Doolittle, do you have any questions?

18 SENATOR DOOLITTLE: No questions.

19 VICE-CHAIRMAN CRAVEN: Are there any persons in the
20 audience who wish to offer any comment in support? There appears
21 to be none.

22 Anyone who wishes to comment in objection? Fine, if you
23 will come forward, please, and state your name.

24 MS. LYONS: Thank you, Senator.

25 My name is Dianna Lyons. I'm an attorney with the
26 United Farm Workers.

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1 I've been rather appalled in the past hour, hour and a
2 half, at what I perceive as a painful lack of candor in some of
3 the responses I've heard to not only a single question from a
4 Senator Committee Member, but a continued pursuit of the same
5 question, seeking a definitive answer.

6 For example, the number of decisions that Ms. Massengale
7 has participated in. I went through all of the decisions that
8 the Board has issued since her appointment this afternoon, and
9 there were 13 that bore her name as one among a number of Board
10 Members, rather than 35. It may be, as she said, that 35 have
11 issued since her appointment, which is a clever way of avoiding a
12 direct response to how many she participated in.

13 And again, with respect to the question of whether or
14 not she has participated in a decision awarding make whole, there
15 was again a clever response; I would hope not a deliberate
16 attempt not to mislead the Committee. But the reference to the
17 J.R. Norton decision, which has to 10 ALRB No. 42, there was not
18 a question presented in the case that required an answer: Do you
19 or do you not want to award make whole. That was a compliance
20 case. Make whole had long before been awarded, and the only
21 question before the Board in 10 ALRB No. 42 was: How do we
22 calculate it.

23 So, she didn't vote to award make whole to employees
24 victimized by an unlawful refusal to bargain, but voted along
25 with other Board Members on a mathematical manner of computing
26 the amount due.

1 And the only decision among the 13 that she participated
2 in, or that bore her name -- and I assume that that indicates
3 participation; that's been what it indicated in the past -- only
4 one involved a question of whether or not to award make whole.
5 Interestingly, that case was on remand from an Appellate Court
6 after the Appellate Court had upheld a number of findings of
7 unfair labor practices by the Board in a liability phase, but had
8 rejected one. The Court remanded the case to the Board for the
9 Board to determine: If, with this new number of violations, do
10 you still want to award make whole, because it's your discretion
11 to decide that not ours, the Court.

12 Not only did Ms. Massengale vote to deny make whole when
13 the rest of the Board voted to award it, as they had in the past,
14 but said in addition that she would not even have found the
15 unfair labor practices that the Court affirmed. So, that is
16 going quite beyond rejecting the make whole remedy.

17 I think her comments about the significance about how
18 the parties view the fairness of the Board should be well taken,
19 although I think they were not consistent throughout her
20 testimony.

21 The UFW and farm workers perceive partiality in her
22 appointment because she represented not just grower interests --
23 and I'm not saying management versus labor here, because it's a
24 far narrower issue than that -- it wasn't just management she
25 represented; it was growers. And it wasn't just growers who
26 committed various and sundry violations of the Act; it was Sam
27 Andrews Sons, for example, who houses farm workers in labor camps
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1 reminiscent of Stalag 17, inside cyclone fences with locked gates
2 and armed guards determining who goes in and out; prohibiting
3 access by union organizers to talk with farm workers about the
4 merits of unionization so they can decide how to vote; about
5 what's going on with collective bargaining so they can
6 participate in the decision of what to ask for, what to demand of
7 their employer.

8 It's representing that sort of interest, not the
9 ordinary run-of-the-mill, middle-of-the-road grower, but the far
10 to the right of Attila the Hun grower, who is one of the most
11 frequent respondents before the Agricultural Labor Relations
12 Board and prolific violators of the Act and farm workers' rights.

13 We don't even have a counter balance that accurately
14 could be characterized as having represented the other side. We
15 have what appears to me, from what I've heard, someone who worked
16 part-time before she was an attorney for a firm that represented
17 unions. We don't even know if she did anything in effect on
18 union's behalf, but we know they didn't represent farm workers
19 under the Agricultural Labor Relations Act. It wasn't even in
20 California, and it certainly wasn't farm workers as clients.

21 So, the perception by farm workers is: Sam Andrews'
22 lawyer is now the Chair of the Board that's going to decide
23 whether I'm going to get back pay or reinstatement because I was
24 fired because of my support for the UFW. We have that perception
25 among the class of people that the statute says California seeks
26 to encourage and protect in their exercise of the rights to
27 unionize.

1 And we have a person selected essentially by the Board's
2 General Counsel, who has been the subject of a good deal of
3 discussion heretofore as well as of a good deal of defense from
4 Ms. Massengale.

5 We have a General Counsel who has done nothing in a
6 positive sense to obtain compliance with Board Orders that are
7 final in the sense that the Board has decided there were
8 violations, the courts, in some instances all the way up to the
9 United States Supreme Court, have affirmed those findings, and
10 the only question left is how much is owed. And we have the
11 General Counsel, rather than going about the process of
12 determining those amounts, going into Sacramento Superior Court
13 and suing the Board, when its own regional director has
14 recommended procedures in a compliance case to ensure that the
15 amount due will be paid, and I'm thinking of the Abadi case,
16 where two brothers have a partnership where they keep all the
17 money as well as within their individual accounts, and a
18 corporation, and the corporation that, through the acts of the
19 two brothers, committed the violation, and the regional director
20 investigated and determined they were sufficiently integrated in
21 terms of control, finances, to find derivative liability and
22 sought to do so. The General Counsel filed a law suit against
23 the Board and stopped the process.

24 The Board's majority attempted to continue the com-
25 pliance process and defended itself in Sacramento Superior Court,
26 but through an internal process never completely disclosed to the
27 parties, certain defenses the Board raised at the insistence of
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1 Ms. Massengale were withdrawn. The vigor of the defense was
2 minimized.

3 Ultimately, after months of delay, Sacramento Superior
4 Court Judge concluded that as a matter of law, the General
5 Counsel was wrong in bringing the suit at all. And we knew that
6 in the beginning, and the Board majority asserted that in the
7 very beginning.

8 And that's not the only case where this same thing has
9 happened, and with apparently the concurrence of the Board Chair
10 in the General Counsel's misconduct, his ignoring the state of
11 the law and attempting to defend those who have already been
12 found to have violated the Act, when it's his job, and a well-
13 paid job at that, to prosecute those who have violated the Act
14 and to obtain compliance in those found in violation to ensure
15 that they pay what is due to their victims.

16 Other examples of the sort of misconduct engaged in by
17 the General Counsel and apparently endorsed by the Chairperson
18 are the disclosure of confidential files, including the names of
19 employee witnesses who have testified before the agency during
20 the investigation process or at some other stage, and who have
21 been assured, and are assured by Board precedent, that their
22 names will not be disclosed, the J.R. Norton case, for example.
23 Those disclosures have been made, and attempts by the Board
24 majority have been entered into to stop the disclosure, again
25 over the opposition of the Chair.

26 Ultimately in the Norton instance, the Board's majority
27 petitioned the California Supreme Court for relief, and the Court
28 has issued a stay order precluding further disclosure.

1 What it boils down to as a practical matter, though, is
2 that rather than obtaining the dollar amounts that are due and
3 the payment of those amounts for the workers who were victims of
4 unfair labor practices dating back to 1975, we have a General
5 Counsel who spends all of his time suing the Board, and we have
6 dissention among the Board Members because of alliance apparently
7 between the Chair and the General Counsel, so that the whole
8 process comes to a screeching halt, and the victims, not only of
9 the employer violations but of what's going on at the agency, are
10 the farm workers. Whether it be by the fact that they don't get
11 the money they're owed until they ultimately give up, leave the
12 state, or in the case when they can't help it, just die, we have
13 people that have waited eight and ten years for even a
14 determination for how much money is due.

15 Another instance, probably more egregious, that covers
16 the compliance area as well as the election cases that Ms.
17 Massengale mentioned were of great significance to her, in San
18 Clemente Ranch, a number of violations of the Agricultural Labor
19 Relations Act over the years have been adjudicated and in
20 particular, refusal to bargain after the union was certified and
21 the certification upheld in the California Supreme Court and make
22 whole ordered. And that order, reviewed by the Appellate Courts
23 all the way up to the Supreme Court, and affirmed, and there is
24 within the Board Order a provision that the union certification
25 be extended for 12 months from the onset of good faith
26 bargaining. There is yet to be a determination that good faith
27 bargaining ever began. But at San Clemente Ranch, a worker
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1 brought to the General Counsel's attention the fact that he
2 hadn't had a raise in a while and that he was dissatisfied with
3 that. The General Counsel, rather than explaining the fact that
4 there's a great deal of money due you and your co-workers
5 pursuant to Board orders that have not yet been complied with,
6 when it was the General Counsel's job to obtain that compliance,
7 instead commenced representation of that worker in a law suit
8 against the Board to compel a decertification election to oust
9 the UFW, the collective bargaining representative, when the
10 Board's own order extends that certification from the time San
11 Clemente begins bargaining in good faith, which they've yet to
12 do, to 12 months thereafter.

13 At that stage, the General Counsel conceding, indeed
14 proclaiming that he was acting as ALRB General Counsel, and that
15 the General Counsel of the ALRB had no role whatever to play in
16 election proceedings before the agency, commenced representation
17 of an employee against the Board and against the certified union.
18 And after a preliminary determination adverse to the Board, the
19 Board filed a writ petition in the Third Appellate District
20 asking that it vacate the order of the Superior Court that would
21 have permitted Mr. Stirling to proceed in that action. On the
22 first page of the petition, you'll find a footnote, the first
23 footnote, where it's pointed out that the Chair dissents from
24 taking that action and wants it known to the Court at the get-go
25 that this is not her position, albeit it is the position of the
26 Board.

1 We have a situation where farm workers don't file as
2 many charges as they once did because they perceive that the
3 General Counsel not only will not prosecute violations by
4 employers of employees' rights, but will take it upon himself at
5 the state's expense, unauthorized by any provision of the
6 statute, to represent a worker against the union and against the
7 Board, and contrary to an order of the Board that he is by law
8 required to enforce. So, they file fewer charges.

9 And the charges that go to complaint, when you look at
10 them as numbers, are far fewer and than ever in the past history
11 of the agency. Not only that, the charges against employers who
12 violate workers' rights are even fewer than those statistics
13 indicate, because if you look at the 1983-84 time span since
14 David Stirling's appointment, you'll find that there are three or
15 four unfair labor practice complaints against employers issued
16 per year, and a great number of unfair labor practice charges
17 against unions issued per year.

18 Obviously, that explains why fewer cases get to the
19 Board. It doesn't explain why nothing is being done because of a
20 diminished workload at the Board level to take dramatic steps, to
21 take affirmative action, to ensure compliance with orders the
22 Board has already issued.

23 Ms. Massengale said once an order issues and it goes
24 through the Appellate review process and is affirmed, it comes
25 back to the General Counsel. Well, it comes back by remand from
26 the Court or by remitter from the Court to the Board. And the
27 Board has authority, under Labor Code Section 1142, to delegate
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1 to someone the responsibility to fulfill its own, the Board's
2 own, responsibility to see that that order is complied with.

3 If the Board chooses to delegate to someone who has made
4 it quite clear he has no intention of fulfilling the obligation,
5 and has every intention, if it takes filing law suits in Superior
6 Court against the Board of thwarting compliance, then that's a
7 choice the Board is making that is a conscious choice, and that
8 does not effectuate the purposes and policies of the Act, and
9 does not encourage farm workers or protect farm workers in
10 exercise of the rights the Act protects. And it must be a
11 conscious choice, because it's been done so consistently over the
12 past two years.

13 If Ms. Massengale was interested in coming up with a
14 manner in which the backlog of compliance cases could be cleaned
15 up, it would be a simple matter to name someone, whether they
16 have the title of Compliance Officer or not, in each region to
17 get the back pay specifications out, get the make whole
18 specifications out in each case that requires one, and get a
19 hearing set, and get a final determination as to exactly how much
20 money is due.

21 And once that specification issues, you'll find that
22 most often, if there is any rule of reason on the other side, it
23 will be a rather simple matter to work out some sort of accord,
24 where it would be totally impossible in the kind of vacuum that
25 employers who have violated workers' rights in the past face now.
26 Now they realize that not only is there no dollar amount claimed
27 against them, there is no probability that there will be one.

1 And there is the hope that there will be sufficient changes in
2 the make up of the Board that the liability itself will be
3 vacated, as Ms. Massengale would have done in the Del Porto case
4 after the Court of Appeal had affirmed findings of unfair labor
5 practices, and she said: Not only do we not award make whole, I
6 would not even find the violations.

7 The growers maintain that hope, that if they wait long
8 enough before there is compliance, meanwhile garnering interest
9 on the amounts paid, that there will be no need to pay.

10 One further instance and then I'll terminate my comments
11 of what I perceive as a misuse of the office and of the tax
12 payers' money and the agency, the Reggie Agricultural Services
13 case, an employer asked the Board to consider a question:
14 application of the United Supreme Court's decision in Shurtan as
15 to whether or not the agency could award reinstatement and back
16 pay to an undocumented worker. The employer asked the Board to
17 consider it; the union joined in that request. The Board set the
18 matter for argument, invited all interested parties to file
19 briefs, and thereupon the employer filed suit in federal district
20 court seeking an injunction to order the Board not to do what the
21 employer itself had first asked the Board to do.

22 The Board responded in federal district court and
23 requested attorney fees. Ms. Massengale dissented from that
24 view, and not only that, took it upon herself to write a letter,
25 without proper service upon opposing counsel, informing the
26 district court judge that that was not her view. No attorney's
27 fees were awarded.

1 As a result, the state spent money defending itself
2 against a patently frivolous law suit, wasted counsels' time that
3 could have been better used obtaining compliance with Board
4 Orders, and farm workers, again, were victimized.

5 The UFW urges a vote of no confirmation.

6 CHAIRMAN ROBERTI: Any questions? Thank you very much.

7 MS. LYONS: Thank you.

8 CHAIRMAN ROBERTI: Ms. Massengale, if you like to
9 conclude.

10 MS. JAMES-MASSENGALE: Many of the situations that Ms.
11 Lyons characterized are not accurate, and it would be unduly long
12 for me to respond in detail, but I will respond to some of them
13 very briefly.

14 One, on the point that I participated in 35 cases, the
15 fact that a Board Member's name is not on a case does not signify
16 whether or not a Board Member participates. A Board Member
17 reviews every case unless the Board Member recuses himself, and
18 the signature only indicates the type of vote of approval or
19 disapproval that the Board Member expresses.

20 So, in fact, I have participated in the number of cases
21 that I've indicated.

22 On the issue of disclosure of records, my position was
23 and is that farm workers' identity should be protected, and the
24 assurances that we have received from the General Counsel was
25 that the Board Members' counsel would be permitted to delete the
26 names of farm workers' names before those records were disclosed.

1 Insofar as the General Counsel has the authority to
2 release his files, that is something that two courts have
3 determined is within his discretion. That is still on appeal.

4 But my position did not include a release of the farm
5 workers' identity.

6 There are so many other things that Ms. Lyons said that,
7 like I said, it would unduly delay me to respond in detail, but
8 if there are any specific concerns that were raised in the minds
9 of any of the Senators which you would like me to address, I'd be
10 happy to do so.

11 CHAIRMAN ROBERTI: Senator Petris.

12 SENATOR PETRIS: Would you speak to the conflict
13 allegation regarding the filing of the law suit by the General
14 Counsel. What's your feeling on that?

15 MS. JAMES-MASSENGALE: I took the position and voted
16 with the majority of the Board, in fact that was an unanimous
17 decision, that we, the Board asserts the position that the
18 General Counsel did not have the authority to represent the
19 employees.

20 What I took issue with is when the Board attempted to
21 file a separate law suit, rather than permitting the issue to be
22 litigated in one court proceeding, pursuing the normal course of
23 appeals, the Board decided to, or the majority of the Board, to
24 initiate a separate law suit the litigate the same issue. And
25 that is what I took issue with.

26 But insofar as the first suit that is pending before the
27 court, I joined in the challenge to the General Counsel's
28 authority.

1 CHAIRMAN ROBERTI: Thank you, Ms. Massengale.

2 Do I hear a motion?

3 SENATOR MELLO: Mr. Chairman, I would move that Ms.
4 Massengale's name be referred to the Senate Floor for
5 consideration.

6 CHAIRMAN ROBERTI: Senator Mello moves that Jyrl
7 James-Massengale be referred to the Senate Floor for
8 consideration. That is without recommendation as to passage.
9 That is the motion before us.

10 The Secretary will call the roll.

11 SECRETARY WEBB: Senator Doolittle.

12 SENATOR DOOLITTLE: Aye.

13 SECRETARY WEBB: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY WEBB: Senator Petris.

16 SENATOR PETRIS: No.

17 SECRETARY WEBB: Senator Craven.

18 SENATOR CRAVEN: Aye.

19 SECRETARY WEBB: Senator Roberti.

20 CHAIRMAN ROBERTI: The vote is three to one; Ms.
21 Massengale's nomination is referred to the Floor without
22 recommendation.

23 MS. JAMES-MASSENGAL: Thank you.

24 (Thereupon this portion of the Senate
25 Rules Committee Hearing was terminated
26 at approximately 5:10 P.M.)

27 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

8th day of July, 1985.


EVELYN MIZAK
Shorthand Reporter

